

**FUNERALS AND BURIALS: PROTECTING
CONSUMERS FROM BAD PRACTICES**

HEARINGS
BEFORE THE
SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE
ONE HUNDRED SIXTH CONGRESS
SECOND SESSION
—
WASHINGTON, DC
APRIL 10 AND 11, 2000
Serial No. 106-27



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FUNERALS AND BURIALS: PROTECTING CONSUMERS FROM BAD PRACTICES

MONDAY, APRIL 10, 2000

**U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
*Washington, DC.***

The committee met, pursuant to notice, at 1:05 p.m., in room SD-106, Dirksen Senate Office Building, Hon. Charles E. Grassley (Chairman of the Committee) presiding.

Present: Senators Grassley, Breaux, and Bryan.

OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY, CHAIRMAN

The CHAIRMAN. I thank everybody for their attendance at this hearing, and appreciate the fact that a lot of people in preparation for this hearing beyond those of us that are employed by the people of the United States have gone to a lot of work to be prepared for it, and particularly for our witnesses we thank you for doing that. But those of you who are just here because of your interest in it, we thank you, too, for taking time out of your busy schedules.

I want to make it very clear up front that I do not consider this set of hearings that involve the funeral home industry as "gotcha" type hearings. We have had the cooperation of the industry very much in working toward these hearings.

Remember, as far as these hearings are concerned, they started out with a proposition put forth by the General Accounting Office that the Federal Trade Commission was not adequately enforcing the Funeral Rule. So this is a hearing not only about a segment of our economy, but it is also about our constitutional oversight of the laws being faithfully executed to make sure that the regulatory agencies are doing their job as well.

So I want to thank Senator Breaux for being here and other members who hopefully will be able to come and attend part of our hearing. I hope that by the end, my committee and the public will agree that it was important for the Committee on Aging to examine the funeral-related industries. In addition, I want to thank the witnesses for being here today. Your testimony will assist the committee greatly in determining how best to address the problems that you raise.

This hearing focuses on a multi-billion-dollar industry that provides funeral goods and services to Americans. Like any industry, it has its decent and caring providers, and like any industry it also has those who are not so caring. The Committee on Aging em-

barked on this investigation on behalf of all those citizens who have had bad experiences with the providers who are not so caring.

Some consumers have been cheated outright, others have simply paid too much money for a funeral or a burial. Why is that? Funeral goods and services are unique from most other consumer goods and services. Consumers rarely shop around and compare prices. They are grieving at that particular time. They are very emotional. They put their trust in the funeral industry. Therefore, it is important that consumers are able to ensure themselves that this industry is worthy of their trust.

I am particularly concerned that older Americans may be vulnerable. They are often targets of opportunists, but they are the least able to recover financially if they are cheated. They may lack resources such as money and good health to fight back if they are misled. So it is with these thoughts in mind that the committee convenes these hearings.

These hearings will be constructive. We will hear some very sad and shocking stories today, but surely these stories will help us identify consumer problems that we want to solve. One important consumer issue is the expense of a funeral and burial. Many ask why are funerals and burials so expensive. Maybe funeral homes and cemeteries just charge what the market will bear.

Each year, approximately 2 million people die in the United States. Slightly fewer than 2 million funerals are arranged each year by 22,000 funeral homes, and that is according to this chart over here. As the chart shows, this is an average of 1.6 funerals per week for each of the funeral homes. Of course, and obviously, some funeral homes conduct more funerals weekly and others may conduct a lot fewer. Nevertheless, these figures set the stage for understanding the prices charged by the industry.

The U.S. Geological Survey is in the process of determining for the first time the number of cemeteries in the United States, and as our next chart shows, the number of cemeteries is staggering. The survey estimates that there will be more than 200,000 cemeteries identified when this project of the U.S. Geological Survey is complete.

Currently, there are 115,291 cemeteries identified. There are various kinds of cemeteries: for-profit, which means publicly traded; non-profit; religious; private and family run; and national cemeteries for veterans. However, only a small portion of the cemeteries across the country are regulated. Funerals and cemeteries are a \$12 billion-a-year industry. This figure does not even include casket manufacturing and pre-paid funeral arrangements. Altogether, this would top \$18 billion or more, so we are talking about a very, very big business.

The national average cost for a funeral, burial, and monument is \$7,520. Here again we have a chart with national averages. Certainly, these costs can be much lower, as is the case with any average. But they can be much higher, as we will hear from several witnesses today. In addition, funeral and burial expenses have exceeded the rate of inflation every year since at least 1990, and have exceeded the Consumer Price Index as compared with all other consumer items, as this chart just placed before you will show.

Another issue facing consumers is the cost of caskets, one of the most expensive purchases for the funeral. The average mark-up on caskets is 500 percent. Some are marked up as high as 2,000 percent, and for cost comparison purposes, this Chart E will explain each of those mark-ups.

Another consumer issue is sealed caskets, which the industry sells as a specialty item. One of our witnesses will tell us about the sales pitch for sealed caskets. The pitch involves telling consumers that their loved ones are protected or that their remains are preserved or that the sealed casket is resistant to the elements. Our witness will tell you that none of that is true.

Another important consumer issue is high-pressure sales tactics. Pre-need funeral salespeople can put on a hard sell. We will hear about an extreme case from one of our witnesses. Older Americans are often the target of high-pressure tactics. Pre-need sales, for instance, are targeted at seniors, since 70 percent of the deaths that occur are of persons 65 or older. Pre-need agreements are among the least regulated products of the funeral industry. To the extent that pre-need trusts are regulated, more than one State office may regulate these instruments, and that leads to confusion and complexity for consumers and regulators.

This committee's interest in protecting seniors from these sorts of high-pressure tactics does not apply just to the pre-need sales industry. It also applies to the finance companies of America as when we had hearings on such pressure on people to take loans out resulting after in loss of their homes.

People might wonder what consumer complaints are about and where you go to complain about these problems. I asked the General Accounting Office to study that issue, among the others that it studied, and the General Accounting Office concluded that there were fewer consumer complaints because, among other reasons, there was no central place for complaints.

So we now have a chart that illustrates the confusion consumers face when they have a funeral or a burial complaint. As you can see, if the consumer can even figure out where to complain, it is not clear what, if any, remedy the consumer will have short of a lawsuit in court. The General Accounting Office did not consider lawsuits as an indicator of the number of complaints that exist throughout the industry.

However, this committee analyzed suits filed against certain large chains and found that there were a significant number of suits. Moreover, the committee found that many were settled, and many included confidentiality provisions. This means that consumers remain in the dark once again on what those problems were that were finally settled by the lawsuit and how they were settled.

Tomorrow, we will hear from a panel of Government and industry representatives. They will discuss the extent of regulations and how consumers are protected. The committee hopes to explore what Government can do better to protect consumers.

Just before I turn to Senator Breaux, just one concluding comment for my opening, and that is since our news conference when we released the General Accounting Office report, I have on a regular basis had dialog and cooperation with the trade associations. Particularly, I have tried to keep in touch with the Iowa Funeral

Directors Association. I even had hearings in my State of Iowa. We have tried to be very transparent with everybody in the industry as we approach this hearing because I know, too, that the leaders of the industry want to make sure that everybody in that industry is ethical.

Senator Breaux.

STATEMENT OF SENATOR JOHN BREAUX

Senator BREAUX. Thank you very much, Mr. Chairman, for your cooperation and also for having yet what is another timely hearing by the Senate Committee on Aging. When most members are not even back from the weekend yet, you have already set out a very ambitious schedule this afternoon of hearing from, I think, a panel that will provide real solid and good information on the issue of the funeral home industry in the United States.

It really, I would say for the benefit of all of our guests, is a continuation of what this committee has been able to do in looking at industries and businesses that affect senior citizens in this country. We have had hearings on Medicare fraud, we have had hearings looking at the nursing home industry, we have had hearings that have investigated telemarketing fraud aimed at seniors, we have had hearings looking at the quality of assisted living facilities in this country.

And this is yet a continuation of this committee's effort to try and look at those parts of our society that have a direct impact on seniors, in particular, and their families. So this is a continuation of that effort, and hopefully other Members of Congress will benefit from the findings that are made here today.

Obviously, you have outlined some of the things that we are going to be looking at, and I do not want to pre-judge what the witnesses will be telling us about their experiences with this industry. You have pointed out that when we have looked at consumer fraud in other areas that obviously it is something that needs to be corrected. And this industry is not unlike any other industry; there will be bad apples as well as good performers.

Our goal is to make sure that we as a Government and a society are doing everything we can to see to it that the bad actors are removed from the business. Certainly, if you are dealing with consumer fraud, this area is equally, if not more important than any other area because you are dealing with people at a very vulnerable time in their lives when they have to deal with the loss of a loved one. To have a bad apple, if you would, perpetrate consumer fraud on a family at that time in their life is very unfortunate, it is unforgivable, and it has to be stopped.

I would point out that I am interested in looking at a number of the areas which you outlined, particularly the question of self-policing of this industry by the funeral boards. It is very difficult for any industry to be policed if they are doing the policing themselves. It naturally brings up concerns if, in fact, the decisions about the industry's compliance will be made only by the industry itself. That naturally, I think, raises potential for abuse, and I look forward to hearing about that.

The other question is the burial policies, which I guess have been more prominent perhaps in the South. I know we have had these

types of policies throughout my State of Louisiana for even longer than I can remember. And it seems that these policies which are sold very inexpensively in the beginning, many times consumers find that they are practically worthless when it comes to actually needing to utilize some of those policies.

So these are some of the things that we are going to be looking at. I am going to have to slip away for a short meeting with the Democratic Leader, but I will return and look forward to today's hearings, as well as the hearings tomorrow. I know that they have generated a great deal of interest. I know the Times Picayune in Louisiana has run a whole series of articles by Bill Walsh dealing with this issue which I find to be very interesting and well thought out. So there is a great deal of interest in this subject, and I think people want us to make sure that they are being treated fairly. Hopefully, this hearing will help do that.

Thank you.

The CHAIRMAN. Thank you, Senator Breaux.

Now, Senator Bryan.

STATEMENT OF SENATOR RICHARD BRYAN

Senator BRYAN. Mr. Chairman, let me join with the ranking member in congratulating you for not only what you have done in the past in terms of convening a series of very timely meetings on issues that affect the Nation's elderly, but the timeliness in convening our hearing today.

It has been nearly four decades since the seminar work by Jessica Medford, *The American Way of Death*, broke forth upon the public scene and exposed to the industry a number of abusive practices that took place. Federal legislation followed, and I think it is appropriate at this juncture for us to review the adequacy of that legislation and to examine what, if anything, needs to be done by way of a follow-on.

As you and Senator Breaux have pointed out, there are a couple of areas that I think bear scrutiny, and one is the adequacy of consumer protection at the State level. It is true, as you observed, Mr. Chairman, that indeed in many States the responsibility for the funeral home industry is widely dispersed among a number of different agencies, which makes it very difficult for the consumer to know who do I go to to get the kind or relief that I may be entitled to.

Second, there is the aspect of pre-need, which is a very large part of this industry, and the protections that are available to the public, too, in terms of the pre-need aspect of this industry. The protections vary widely from State to State, and I think we appropriately ought to take a look at this.

And then finally, Mr. Chairman, as our colleague Senator Breaux pointed out, by and large all of us have certain faculties or instincts to make inherently sound judgments when it comes to making purchases in our lives. But at a time that one is selecting these particular services, it is very emotional. It is a very difficult time, and families are very vulnerable. Decisions made in that kind of environment, it seems to me, suggest that a special measure of protection ought to be made available to make sure that the individ-

uals who are grieving because of the loss of a loved one are not exposed to practices which victimize them and their families.

Again, I thank you, and I look forward to hearing these witnesses.

The CHAIRMAN. Thank you. Well, I thank Senator Breaux and Senator Bryan. I usually take note, and I neglected to this time, of the great deal of cooperation I have from the ranking Democrat on this committee. In cooperation, we have generally done everything on this committee in a bipartisan, cooperative way, and I really appreciate that. And I forgot to mention that, so I mention that now.

Our witnesses today will be divided into two panels. On the first panel we will hear from convicted pre-need sales executive Irwin Karp. Mr. Karp served as vice president of pre-need sales with a cremation company. He left that company and established his own company. He was convicted in 1999 of 13 counts of grand theft of pre-need funds and is currently serving up to 6 years of incarceration in California.

Obviously, there is great difficulty in transporting Mr. Karp to be with us in person today, so the committee has arranged to have Mr. Karp testify via video teleconferencing. This will afford members the opportunity to question Mr. Karp in person, and I will allow questioning of Mr. Karp before I announce the second panel.

Mr. Karp, we are ready to receive your testimony.

**STATEMENT OF IRWIN KARP, CONVICTED FELON,
CALIFORNIA DEPARTMENT OF CORRECTIONS, TEHACHAPI, CA**

Mr. KARP. OK, thank you. To give a little background of myself, when I was 20 years old I took a job as a salesman in a Wall Street over-the-counter firm. Because of my performance, I was made a partner and eventually I became the owner of the firm, buying out my partners.

Ever since then, for most of my adult life, I have been in sales management in one form or another, sometimes being the sales manager for specific firms, sometimes being hired as an independent contractor to lecture and/or train sales managers for larger corporations. I also started a water purification sales company in Dallas, TX, in 1978 which eventually went public in 1984.

In 1989, I became the sales manager for the Neptune Society, in Burbank, CA. My job was to hire and train sales personnel for purposes of setting up and developing a pre-need division for this 17-year-old firm. Within 2 years, monthly sales had reached an annualized rate of \$5 million per year. By the time I left Neptune, the trust fund had grown to \$12 million from a rather modest beginning.

It is important to understand that 60 percent of this trust fund eventually drops to the bottom line as profit, as the cost at that time was \$200 and \$500 was being put in the trust fund. We were also allowed to invest that trust fund and the income belonged to us when the individual died, even though they paid taxes on the income all along the line.

I left Neptune to form my own company because the owner of Neptune reneged on his promise to give me equity in the company when I achieved certain goals, which I surpassed. To elaborate fur-

ther on my background and how I reached my present circumstances, please refer to the enclosed letter on my behalf to the Superior Court of California on January 19, 2000, along with its enclosure, part of a letter written to Deputy Attorney General David Taglienti on September 15, 1992.

I would also like to have you understand that I took, or borrowed, in my mind, this money from the trust fund because my partners were supposed to invest on a regular basis. And because of the length of time it took me to get my license, which normally is a 30- to 45-day period, but because of some other people's private agenda I was refused a license and took 9 months to get one, they could not keep their commitments to the investors. So I was hurting for money and I used the trust fund and borrowed, as a lot of funeral directors do, in the hopes of putting it back because I was talking to investors constantly and had the optimistic hope that when the new investors came in, I would obviously replace this money.

After giving careful consideration to your investigation of abuses in the cremation industry and possible solutions, I am dividing it into four categories. No. 1 is licensing, No. 2 is "whose ashes," No. 3 is trust fund protection, and No. 4 is elimination of fraudulent sales practices.

As far as licensing, the president or manager of day-to-day operations should definitely be a licensed funeral director. The Neptune Society, in Burbank, has been operating for 25 years without the owner holding a license or ever having even taken a required test. He does, however, run the day-to-day operation, sign all checks, and control completely the trust fund. The licensee is a man who never set foot in the office in the 3 years of my employment, nor did I ever speak to him. This may have changed since I left the company in December 1991, and the company has received much negative publicity since then.

No. 2, whose ashes? When a person purchases a pre-need cremation plan, he knows that he will not be there to see it is properly carried out. One of the things he most desires to know is that when his body is reduced to ashes, it will be his ashes that will be scattered as he designates, at sea or the finish line at a race track, or placed in an urn to be kept by his family. What he does not want is for somebody else's ashes in part or in whole to be so scattered or placed in the urn, which has happened often.

I suggest possible precautions as follows: No. 1, a fireproof identification bracelet be included with each policy and kept with the customer's paperwork required for cremation. When the customer dies, a family member or designee—for example, a hospital or nursing home—would place this bracelet on the customer's wrist before having the body removed to the crematorium or holding facility. Perhaps there could be laws mandating that the cremation pick-up service must acknowledge receipt of bodies with such bracelets, and when necessary such institutions as police morgues or hospital morgues would not release such bodies to be transported to the holding facilities until such bracelets are in place.

The reason for this being important is usually most companies like Neptune simply brokered out these services. They hired a pick-up service, they hired a crematory. They were basically just a sales

organization. Ultimately, each of these bracelets could be attached to the urn they are giving to the family with the ashes.

B: After the body is transported to the holding facility, the transport company would certify that it has arrived with the bracelet.

C: There should be an independent observer present at all cremations to verify that the ashes correspond to the identification bracelet, and that one body's ashes have been completely retrieved and been unadulterated by any commingling. The observer can either be a family member or State official attached to crematories—as an example, crematory A on Monday and Thursday or crematory B on Tuesday and Friday—or officials arranged by the pre-need company, such as members of the clergy, to go to whatever cremation is handling their case. Perhaps a tax incentive to the pre-need company might be offered, such as an additional charitable deduction for retaining members of the clergy.

Since 80 percent of the people choose scattering at sea, a member of the clergy should definitely be present on the boat as a witness to ensure all that should be scattered are scattered. This does not happen at present. In Neptune's case, the witnesses are the captain of the boat and his wife. Both are employed by Neptune, so they may not always have the deceased's best interests at heart. Indeed, one of the major abuses in the industry is the sale of body parts. This is rather gruesome, but this happens. Such an observer could verify that the complete body is being cremated.

No. 3: trust fund protection. This is where most of the abuses take effect. The problem is ensuring that the pre-need company puts the required money into a trust fund in a timely manner and removes only when and for the purpose required by law. I do not believe this can be ensured if the cremation company itself is in control of the trust moneys, which is normal.

I suggest that, No. 1, an independent firm be retained to do the following: verify on a quarterly basis that properly allocated trust funds have been deposited on the appropriate dates, within 30 days of death. Present law requires an annual trust fund statement. This should be submitted by an independent firm or bank or custodian, but not by the funeral director because, as is presently the case, he could put down whatever figures he wishes and they are not responsible to anyone to answer for this. They are supposed to be audited annually, but this very rarely happens. In all fairness to our State here, they claim that they don't have enough funds to justify supervision. Also, notification of such deposits should go to the customers to give them peace of mind.

B: Direct deposit of properly allocated dividends and interest to be made by the bank or investment fund or brokerage house to the custodian of the trust fund.

C: Annual form 1099s should be sent to each subscriber reflecting the above, the interest or dividends earned as previously stated by the IRS. This is also not being done.

D: Upon the customer's death, have the trust custodian release the applicable funds to the pre-need company only after receiving a copy of the death certificate and an affidavit of cremation. The custodian should not be the owner, officer, or director of the funeral home or pre-need sales company.

E: A statement of deposits and withdrawals should be sent to the State monthly, and these should all be subject to spot-checking.

Four: Elimination of fraudulent sales practices. I have two suggestions for dealing with this. No. 1, a random compliance call by a company compliance officer. I suggest each new salesman should maybe have as many as 7 of his first 21 sales followed up to ascertain what he said and what representations are made. After the first 21 sales, it could be spotted at 1 out of 10 or whatever is comfortable.

B: Enact laws making it legal for a prospective customer receiving a sales pitch by telephone or in person to tape such pitch without informing the salesman. We are fast approaching a time when micro recorders will be commonly available, and the fear of such being used will cause reluctance on the part of the sales company and salesmen to resort to chicanery in order to make a sale, which certainly does happen now.

C: Consider licensing all salespeople. At present, in our State they do not have to be licensed.

D: Customers should receive a statement, including 1099s, annually and possibly other factors. At present, what happens is the cremation policy has a set figure to it and they will never have to pay any additional money, no matter when their death occurs. This is not accurate. They do have to pay interest all along the line for the interest that was earned. They have to pay taxes on that. Also, if they do not die in their present neighborhood or in close proximity, they are charged extra for dying out of the area. This could be as much as \$500 to \$2,000 in addition, and this is very, very rarely mentioned during the sales presentation.

The above appears to me to be the major concerns of the business. I would like to suggest, however, that 100 percent of the monies received should not be placed in trust funds. To do so of necessity forces the company to pay rent, advertising, printing, mailing, commissions, salaries, et cetera, out of capital, and will limit those who can go into this business to large, well-established funeral companies who have no desire to offer an inexpensive alternative, cremation, to their extraordinarily profitable business.

[The prepared statement of Irwin Karp follows:]

TESTIMONY OF

IRWIN KARP

before the

SPECIAL COMMITTEE ON AGING

APRIL 10, 2000

When I was 20 years old I took a job as a salesman in a Wall Street over-the-counter firm. Because of my performance, I was made partner and eventually I became the owner of the firm. Ever since then, for most of my adult life, I have been in sales management in one form or another, sometimes being the sales manager for specific firms, and sometimes being hired as an independent contractor to lecture and/or train sales managers for larger corporations. I also started a water purification company in Dallas, Texas in 1978 which eventually went public in 1984.

In 1989, I became the sales manager for the Neptune Society in Burbank, California. My job was to hire and train sales personnel for purposes of setting up and developing a pre-need division for this 17-year old firm. Within two years, monthly sales had reached an annualized rate of \$5 million per year, and by the time I left Neptune, the trust fund had grown to \$12 million from a rather modest beginning.

I left Neptune to form my own company because Manny Weintraub, the owner of Neptune, reneged on his promise to give me equity in the company when I achieved certain goals.

To elaborate further on my background and how I reached my present circumstances, please refer to the enclosed letter written on my behalf to the Superior Court of California on January 19, 2000, along with its enclosure (part of a letter written to the Deputy Attorney General, David F. Taglienti, Esq., on September 15, 1992). It is important, I believe, to state the trust monies were used to pay company obligations and not for personal gain. I also voluntarily handed in my license when I realized I could no longer operate. I arranged to have one and then a second company handle my customers and sent letters to all customers. The state confirmed this as I actually personally paid for eight cremations well after going out of business. So obviously there never was any intent to defraud anyone.

I have given careful consideration to your investigation of abuses in the cremation industry and possible solutions, therefore, I am dividing them into four categories:

- I. Licensing
- II. Whose Ashes?
- III. Trust Fund Protection
- IV. Elimination of Fraudulent Sales Pitches

I. Licensing

The president or manager of day to day operations should be a licensed funeral director. The Neptune Society in Burbank, California has been operating 25 years without the owner holding a license or ever having taken one required test. He does, however, run the day to day operation, sign all checks, and control the trust fund. The licensee is a man who never set foot in the office in the 3 years of my employment nor did I ever speak to him. This may have changed since I left the company in December 1991, and the company received much negative publicity.

II Whose Ashes

When a person purchases a pre-need cremation plan, he knows that he will not be there to see that it is properly carried out. One of the things he most desires to know is that when his body is reduced to ashes, it will be his ashes that are either scattered where he designates (at sea; the finish line at a racetrack) or placed in an urn to be kept by his family. What he does not want is for somebody else's ashes, in part or in whole, to be so scattered or placed in the urn. I suggest possible precautions as follows:

- A. Fire proof identification bracelets be included with each policy and kept with the customer's paperwork required for cremation. When the customer dies, a family member or designee, for example, hospital or nursing home, would place the bracelet on the customer's wrist before having the body removed to the cremation. Perhaps there could be laws mandating the cremation pickup service must acknowledge receipt of bodies with such bracelets and when necessary such institutions as police morgues, hospital morgues, etc., would not release such bodies to be transported to the holding facilities until such bracelets are in place. Ultimately each of those bracelets would be attached to the urn or given to the family with the ashes.
- B. After the body is transported to the holding facility, the transport company would certify that it has arrived with the bracelet.
- C. There should be an independent observer present at all cremations to verify that the ashes correspond to the identification bracelet and that one body's ashes have been completely retrieved and been unadulterated by any co-mingling. The observer can either be a state official attached to crematoriums (e.g. to Crematorium A on Monday and Thursday, to Crematorium B on Tuesday and Friday), or officials arranged for by the pre-need company, such as members of the clergy, to go to whatever crematorium is handling their case. A tax incentive to the pre-need company might be offered, such as an additional charitable deduction for retaining members of the clergy. Since 80% of the people choose scattering at sea, a member of clergy should be present on one boat as the witness or ensure all that should be scattered is scattered. At present, in Neptune's case, the witnesses are the captain and his wife. They are also employed by Neptune.
- D. One of the abuses in the industry is the sale of body parts. Such an observer could verify that the complete body is being cremated.

III Trust Fund Protection

The problem is ensuring that the pre-need company puts the required money into a trust fund in a timely manner and removes it only when and for the purposes required by law. I do not believe

that this can be ensured if the cremation company itself is in control of the trust monies. I suggest that:

- A. An independent firm be retained to do the following:
 - (1) Categorize the income as trust money and non-trust money.
 - (2) Verify on a quarterly basis that properly allocated trust monies have been deposited on the appropriate dates. Present law requires an annual trust fund statement. This should be submitted by an independent firm, or bank, or custodian, but not by the funeral director.
 - (3) Send notification of such deposits to the customers.
- B. Direct deposits of properly allocated dividends and interest be made by the bank, or investment fund, or brokerage house to the custodian of the trust fund, who shall reinvest or distribute same as indicated.
- C. Annual form 1099's be sent to each subscriber reflecting the above.
- D. Upon the customer's death, have the trust custodian release te applicable funds to the pre-need company only after receiving a copy of the death certificate and an affidavit of cremation. Custodian should not be owner, officer or director of the funeral home or pre-need company.
- E. Statement of deposits and withdrawals should be sent to the state monthly.

IV Elimination of Fraudulent Sales Pitches

I have two suggestions for dealing with possible fraudulent sales pitches:

- A. Random compliance calls by a company compliance officer. I suggest each new salesman should have seven of his 21 sales followed up to ascertain what he said and what representations he made. After the first 21 sales, compliance would continue at a 10% rate.
- B. Enact laws making it legal for prospective customer receiving a sales pitch by telephone or in person to tape such pitch without informing the salesman. We are fast approaching the time when micro recorders will be commonly available, and the fear of such being used will cause reluctance on the part of the sales company and/or salesman to resort to chicanery in order to make a sale.
- C. Consider licensing all sales people.

The above appears to me the major concerns of this business. I would like to add, however, the suggestion that 100% of the monies received should not be placed in trust. To do so, of necessity forces the company to pay rent, advertising, printing, mailing, commissions, salaries, etc., out of capital, and will limit those who can go into this business to large, well established funeral companies will have no desire to offer an inexpensive alternative (cremation) to their extraordinarily profitable business.

JULIAN R. WEINBERG
234 South El Molino Avenue
Pasadena, California 91101
(626) 792-0575

January 19, 2000

Superior Court of California
County of Ventura
800 South Victoria Avenue
Ventura, CA 93009

Attn: Hon. Arturo E. Gutierrez

Dear Judge Gutierrez:

My purpose in addressing the Court is to disclose information of which I have first-hand knowledge, that, while not pertinent to Mr. Karp's guilt or innocence of the charges against him, is pertinent to a just resolution of the matter. The prosecution has indicated a belief that Mr. Karp originated a scam with the intent of defrauding a large number of citizens in Ventura County. I can state categorically that this is not the case.

I first met Mr. Karp in the middle of 1991 and in conversation he discovered that I had practiced law in New York prior to coming to California, specializing in commercial law. He then recounted the following to me: A year and a half or so prior to our conversation, he had met with Mr. Manny Weintraub, the President of the Neptune Society, a major national cremation membership society, to discuss introducing a new product to the corporation. That product was the sale of pre-need contracts. Up until then, Neptune had sold a membership for a nominal sum of money which, upon the death of the member, would permit his heirs to contact Neptune and carry out the wishes of the then deceased, with the family paying whatever the going rate was at the time of death. It was Mr. Karp's opinion that there was a market for people who did not want to be a burden on their families and who wanted to arrange their own cremation in advance, leaving their heirs without financial responsibility. With this idea in mind, Mr. Karp was hired by Mr. Weintraub as Vice President in charge of this pre-need division. His remuneration was to be a draw against commission plus overrides. Upon reaching certain goals, as outlined by Mr. Weintraub, he was, in addition, to receive equity in the pre-need division of Neptune.

Having exceeded those goals, Mr. Karp inquired of Mr. Weintraub about his stock, and was told basically that Mr. Weintraub did not intend to honor his commitment. What could he [Karp] do, he asked me? I told him that if he had nothing in writing, he could not do anything. At which point he produced a hand-written scrawl signed by himself and Mr. Weintraub, generally outlining

Hon. Arturo E. Gutierrez
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the agreement. It was my opinion that this would result in a difficult case. If he could prove that the promise of equity was consideration and not gratuitous, he might prevail, but it would take considerable time and money, with uncertain damages.

Mr. Karp made it clear to me that he did not trust Mr. Weintraub's ethics or honesty and would just as soon leave and start his own company, but he did not have the money. After discussing the business of pre-need cremation, both as to what he had accomplished in a year and a half at the Neptune Society and the ways in which he felt he could improve on that result based on his current experience, I took it upon myself to search for investors for him. After thorough investigation (even so far as visiting Neptune and watching Mr. Karp conduct a sales meeting), a Mr. James Egide agreed to supply \$350,000 in cash and services in return for 50% of the company to be formed. Mr. Karp, who had reached an income position which if annualized would have amounted to \$150,000 a year, would take no salary, but a draw against commissions amounting to less than two-thirds of his then current income.

In December of 1991, using the capital contribution of James Egide, Mr. Karp rented and furnished an office, rented a refrigerated storage facility, and created all the paperwork necessary to getting a funeral directors license, for which he applied. He then recruited and trained twenty top-notch sales people. Advertisements were put in the newspaper and a 100,000 piece mailing was set to go the day after the Funeral Board would meet to issue the license. Since the only matters that needed to be accomplished to get approval for the license were (a) the approval by a Funeral Board investigator of the offices, contracts, brochures, mailings, etc.; (b) verification that Mr. Karp had passed his test for the license; and (c) verification that neither he nor Mr. Egide had a criminal record; and since Mr. Karp knew that the offices and all the paperwork met the Funeral Board requirements, that he (Karp) had passed his test for a license, and that neither he nor Mr. Egide had a criminal record, he assumed that approval of his license would be a formality.

The day before the Funeral Board was scheduled to meet, Mr. Karp received a letter from the Board stating that because of State budgetary cuts, the meetings of the Board would take place every 90 days instead of every 30 days. This meant that it would be another 60 days before he could receive a license.

A great deal of money had already been spent on paperwork, on recruiting, on rent, on staff, on advertising. If Karp closed up shop now, he would lose all 20 of his sales people and the continuity of advertising, while continuing to incur the cost of rent, utilities and salaries. Believing this was merely a technicality, resulting as he had been told from a budget crunch, he proceeded on schedule to sell pre-need contracts. He kept 100% of the payments he had received from customers in an escrow account, while paying all of the operating expenses, including commissions, out of capital. When finally there was a meeting of the Funeral Board, they refused to issue Karp a license because he had "been selling without a license."

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At first, we assumed that this was bad luck, and Egide and Karp asked me to discuss the decision with the State Attorney General's office on behalf of the company. The Deputy Attorney General and I, over a period of months, debated the issue. During this time Mr. Karp, Mr. Egide and I came to realize that there was a high probability that luck had played no part in the scenario. We came to believe that there had been a conspiracy between Manny Weintraub of Neptune Society and Mr. Allen, the head of the Funeral Board. I voiced my suspicions to the Deputy Attorney General (David F. Taglienti, Esq.) and I was sufficiently persuasive so that he agreed to "look into it" (see pp. 3-6 of letter of September 15, 1992 attached). Subsequently he informed me that Mr. Allen was resigning; that we would have our license suspended for nine months retroactive to the date of denial (90 days after our agreement); and we would pay legal fees. When I objected, he pointed out that although we might well win on appeal, said appeal would take six months. This way, the corporation would be in business in three months. Furthermore, we were never billed for legal fees, which I construe as an unofficial admission of Mr. Karp's victimization.

By this time Mr. Egide had become involved in other enterprises and was unwilling to invest a new \$350,000. A new company was formed in which Mr. Egide did invest \$10,000-\$15,000; someone else invested \$65,000; and a third party invested \$85,000. The problem was that some of this was cash and some of it was supposed to be able to be drawn down by the new company as needed. This was Mr. Karp's second big mistake. By his own reckoning, it would take \$300,000 before the company was in the black. In this case, he had about \$165,000 and some of it was not available when promised. Desperately trying to keep the business going until new investors could be found, he began delaying the trust deposits. California law allowed 30 days from the time that payment was received from a customer to the time the amount reserved for the Trust must be deposited. He began delaying such deposits and one thing led to another. Believing that only if he had a going business would he attract new investors, he did his very best to keep the office open as long as possible. When he finally had no choice, he closed the office and arranged to have those people with contracts serviced by another cremation company. He paid for the cremation of the first six to eight deceased. He finally reached a point where he simply could not meet his commitments and he gave up.

At no time was his behavior part of a plan to defraud. Victims lost \$550 each. Investors lost hundreds of thousands. Karp lost his dream of a successful business, his reputation, and an income that had reached \$150,000 per year and was rising.

Mr. Karp has by dint of great effort and embarrassment to himself and his family borrowed \$20,000 on condition that he remains in a position to repay it. This will allow each of the complaining witnesses to be cremated upon their death by a solid, long-standing cremation company. In addition, Karp will pay \$1,000.00 every month to take care of whatever other claims may still exist.

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To this end, Secure Crematorium, Inc., a cremation company in existence since 1992, doing over 200 cremations per year, has agreed to handle the cremation for each of the complainants for their wholesale price (the amount it charges funeral directors). At this time that amount is \$150.00. In addition, a fee (currently \$40 to \$130 depending on location) would be charged for pick up and transportation of the body. To cover this cost, currently about \$280.00, Mr. Karp will deposit \$500.00 per claim with the Court, which will pay the requisite amount to Secure Crematorium, Inc., leaving the surplus to be remitted by the Court to the claimant's heir or designee.

Putting Mr. Karp, a 63 year old man with no criminal record, in jail will mean (a) the victims get nothing since he can't work and earn money to repay them; (b) the County will be no safer; and (c) the County will undertake the cost of incarceration.

Giving Mr. Karp probation results in (a) the victims getting what they contracted for; (b) the State having one more taxpayer, thereby receiving from rather than paying for Mr. Karp. (c) there will be no increase in danger to the State, and (d) Mr. Karp will have the opportunity to make restitution.

This seems to me to be a punishment that fits the crime.

Respectfully submitted,

COPY

Julian R. Weinberg

September 15, 1992

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understood that no contract existed before Karp accepted the application. To the best of Respondent's knowledge, only one customer complained upon learning Atlantis was not licensed. She complained to the sales person, who notified Karp. Karp then called her, apologized, and returned her check uncashed. If any other complaints were made to the Board, they were not forwarded to Respondent.

Second, while I am not privy to the text of the February 21, 1992 presentation, if it was taped by a Kenneth Brown, it is Respondent's belief that he is connected, in a serious manner, with Neptune Society, Karp's previous employer, and the prime competitor of Atlantis. The President of Neptune has spoken publicly against Karp, warning a potential associate against doing business with Karp and telling a group of employees that he will see to it that Karp doesn't get a license.

Brown clearly attempted to get the Funeral Board to deny Karp a license. He solicited from Atlantis a presentation he didn't need; he taped it; and, as enclosed copies of letters indicate, he attempted to persuade Karp to convert the application to a contract.

Paragraph 7 - Deny in full. Respondent contracted with no one. Respondent accepted applications for pre need agreements, did not execute same, and held the checks without cashing them until advisors recommended depositing them into an escrow account.

Respondent's Behavior

1. Mitigating Factors:

The Atlantis Society has been accused of misrepresentation in its application for a license. It is clear from the nature of the offenses that they were unintentional and of little significance. No attempt was made to distort qualifications or to hide facts that might disqualify Respondent. Given Respondent's budget, it is difficult to see how any unbiased person could impute intent, on Respondent's part, in the commission of illegal acts to save a hundred dollars in license fees or the cost of leasing a holding facility.

The only written misstatement of which Respondent is aware was the use of the word licensed in the first mailing. This was written when Respondent believed it would be licensed before the mailing and was not excised by oversight. It was removed from all subsequent mailings, even though no complaints by customers or the Board were received.

David S. [redacted]
 September 15, 1992
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As for soliciting applications, I believe it should be viewed in context.

The Funeral Board insists that before applying for a license the applicant have an office, telephones, a holding facility, and printed matter. Karp, as a licensed manager, knew he was qualified. Karp and James Egide (Egide), the other major stockholder, knew that they had no criminal record.

At the time that Karp applied, the Board met every thirty days. It was reasonable for Karp to assume he would be licensed within thirty days. Having already spent considerable sums of money in mandated preparations, he decided to spend much, much more to be ready to sell as soon as the license arrived. This proved to be a mistake.

After receiving permission from the Funeral Board, Respondent interviewed a large number of applicants and hired more than twenty sales people. He paid to have all required brochures, mailings, other forms and literature designed and printed, in sufficient number to support the sales force. He was then informed that, due to circumstances beyond anyone's control, the Board would now meet quarterly, rather than monthly. Nobody asked Respondent if the ex post facto change in the rules would cause Respondent any financial difficulty.

Karp had two choices. He could fire his sales staff, he could fire his office staff, he could fire his manager (all of which has now been done); or he could go forward in a manner that might be frowned on officially, but couldn't be objected to in the real world. He cancelled the plans for media advertising. He emphasized to sales people the fact that no application was a contract until signed. He kept all deposits in original check form, until deposited into an escrow account. He paid all employees out of Respondent's own funds, including sales commissions.

Clearly, all Respondent did for the people of California was good. At a time when businesses were fleeing the state, it started a new business capitalized at \$350,000 minimum. At a time when unemployment was increasing, it hired 20-30 new people, and hoped to get the number up to 100 people within a year. At a time when people's disposable income is getting lower and lower, it offered the citizens of California a modern, clean, inexpensive and thoroughly professional alternative to the high cost of traditional funerals and burials.

If, in spite of the above, the Funeral Board felt the need to take cognizance of technical violations of the rules, there were avenues other than silence followed by denial of a license. Had Karp been called and told he needed a second

DAVID P. EGIDIO, DPM.
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application for a license for the San Francisco office, the application would have been in the mail the next day. Had the inspector informed Karp that using someone else's holding facility was not acceptable, and why, the situation could have easily been corrected. Instead, the inspector signed off on it and now misstates the facts. If Mr. Allen had called Karp and told him that he can't solicit until he receives his license, Karp would have pointed out that no contracts were being signed. If Mr. Allen was fair, he would have looked at the situation and said nothing, allowing it to go on without official sanction. If he really wanted the place shut down and everyone fired, he would have told Karp, and that is what would have happened. In retrospect, I guess that's what he would have done.

In any case, neither Karp nor Egide have any history of wrongdoing. They profited not at all from any rules violations. The worst one can say is that after being victimized by circumstances, they behaved foolishly in an effort to avoid suffering excessively from the budget crunch of the State of California. Surely denial of license is far too severe a disciplinary action. A slap on the wrist or brief probation seem more appropriate.

Rehabilitation

Rehabilitation has been complete. While the office still exists and while discussions have taken place with licensed parties to use the facilities, including one party that was issued a license with the name Atlantis, Respondent is and has been completely out of business. All moneys were returned to applicants. No effort was made to recapture commissions. Atlantis' telephone numbers have been cancelled. No office staff exists.

M.B. It is interesting that even though Respondent owns the corporate name Atlantis and applied for a license in that name, another party that applied after Respondent was granted a license in that name, even though the Funeral Board, until that point, had never even informed Respondent of charges, never mind discussed the truth or context of said charges with Respondent.

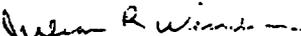
I believe that Atlantis and Karp have been treated very poorly. The purpose of regulatory agencies such as the Funeral Board is to protect the public against scoundrels, not to protect existing members of the club against newcomers. Neither Karp nor Egide are rogues and the public was clearly not harmed, nor would it have been had the license been issued.

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Since I can't turn the clock back and a civil action would take more time than Respondent wishes to devote to it, may I suggest the following settlement. Six months probation, retroactive to the day the license was denied. A letter from the Board, officially stating that the denial of a license was null and void, with respect to Egide and Karp. Permission to take the license in a nominal name, and change it to a permanent name within 30 days, by simply notifying the Board of same.

I hope that the above fulfills the criteria that you suggested. Should you wish further information, please call me at (818) 792-0575.

Sincerely,


Julian R. Weinberg

JRW/bh
enclosures

The CHAIRMAN. Thank you, Mr. Karp.

We will take 5-minute turns at questioning. I will start. By the way, we don't have the light here, so will the staff keep track of the time for me and notify me and Senator Bryan and other members who come when our time is up?

Mr. Karp, how long is your sentence? Did the judge order restitution to the victims, and how much is the restitution that you owe, if the judge ordered restitution?

Mr. KARP. Before I was sentenced, we had a restitution hearing set up, as I agreed to pay restitution to all of the people who filed for me. The judge agreed to a restitution hearing, but at that hearing he said he could no longer honor the restitution and that we would have a sentencing hearing. As of now, I do not know how much restitution is being paid. I was sentenced to 2 years in jail, although there was an additional six 8-month enhancements, which means a total of 6 years.

The CHAIRMAN. What cremation companies did you work with during your career, and under what circumstances did you leave each company?

Mr. KARP. I only worked with the Neptune Society as a vice president of the Neptune Society from February 1989 until December 1991. I then formed my own company in 1992. After going out of business because of lack of capital, I worked with the Omega Society for a period of about 4 months.

Part of my conditions of employment were that they would take care of the existing clients I had at the other business, and we actually did cremate about three or four more people while I was at Omega which I paid for personally. I could no longer work for Omega because we had a conflict, a personality clash, let's say, and I went to another company called Secure Cremations, which does cremations for most of the funeral industry that didn't have their own crematory in southern California. They had agreed to cover all of my clients as well, and again we handled another three or four clients and then I could no longer financially pay for them myself. So they stopped doing it, so the people were left without a service.

The CHAIRMAN. Mr. Karp, you stated that you worked for the Neptune Society of Los Angeles. Is Neptune a nationwide operation? Is it in any way connected with the Neptune Society of San Francisco or Las Vegas, owned and operated by Stewart Enterprises? My understanding is that it is not connected with Stewart Enterprises.

Mr. KARP. That is correct, it is not connected. They are separate, but they are not a national company. In fact, that was one of our hopes in our business plan that we would form a national company. There is no one at present doing this on a national basis, and each State has their own regulations, which makes it cumbersome. In some States, as in California, we come under consumer affairs. In other States, we come under the banking commission; in other States, the insurance commission. There is no standard.

The CHAIRMAN. For how long did you sell cremation policies? How much was placed in trust and how much was kept for administrative costs?

Mr. KARP. At the Neptune Society, the cremation plan was \$1,049, of which \$525 went into the trust fund and \$524 was allowed to be used for overhead.

The CHAIRMAN. How were pre-need contracts marketed, and was it by telephone, mail, or some other means?

Mr. KARP. They were marketed on a direct sale basis. In other words, what we did at Neptune was send out 100,000 pieces of mail a month. We usually got about a 1-percent return, which gave us 1,000 people to go after. These people were inquiring basically for information. They did not realize that a salesman would be calling on them.

The CHAIRMAN. What is the educational level of the typical pre-need salesperson, and what kind of training is provided?

Mr. KARP. As far as education, there is no criteria. We had people that hadn't graduated high school. Basically, they were direct salespeople from other industries. They could have sold home improvements or vacuums, et cetera. As far as the training, it could be as minimal as some companies trained for 1 day. I trained for 5 days, and that was probably longer than most. Most of the training involved sales tactics as opposed to knowledge of the industry.

The CHAIRMAN. What are the sales techniques that you have observed in the industry, and what are some of the ways that people are pressured to buy pre-need contracts?

Mr. KARP. Well, they are pressured on the basis of guilt. Do you want to leave this burden to your children to take care of when you are gone? Do you know how much it will cost when you are gone? In other words, you are 55 years old, Mr. Jones. You will probably live for another 25 years. Do you have any idea what that cost will be, and is this a burden you really want to put on your kids or your relatives or things of that nature?

Where the abuses come into effect is there is a difference between pre-need and at-need. Pre-need is where they are planning for the future. They are setting up and paying \$1,000 in the hopes that they will never pay any more money even if they die 20 years from now, and that is not the case. They always do pay a little bit more.

But at-need is cheaper than pre-need because you don't have to set up a trust fund, you don't have to administer a trust fund, you don't have to pay commissions. It is usually a case where someone just died and they call you and they want you to handle the cremation for them. Unfortunately, when the salesperson comes into the home, in some cases they deal with people that are 90 years old and are ill with cancer or whatever, with the knowledge that they know they are going to die in 5 or 6 months. And instead of telling the people, well, don't pay pre-need, you can do it at-need when the time comes and it will be cheaper for you, the salesman obviously sells a pre-need contract.

The CHAIRMAN. I now turn to Senator Bryan.

Senator BRYAN. Thank you very much, Mr. Chairman.

Mr. Karp, was Neptune, your employer, involved in providing at-need in addition to the pre-need burial contracts?

Mr. KARP. Yes, they were.

Senator BRYAN. Can you tell us in terms of a profit center, did the funeral company make most of its money on the pre-need contracts or is most of the money made by the at-need burials?

Mr. KARP. On the at-need, they made an immediate profit because the people had just died and in order to do the cremation—there is no such thing as receivables in our business. When the people die, they get an immediate profit. But in the pre-need, the main profit comes from the interest that you are going to earn or the income you are going to earn on the trust fund.

Senator BRYAN. Right, I understand that. What I was trying to ascertain is what is the more profitable part of the business. I realize that the at-need—you get the full amount of the funeral immediately. But is the pre-need or the at-need the most profitable part of the business over the long term?

Mr. KARP. The pre-need, for sure.

Senator BRYAN. The pre-need. And under California law, the interest accrues to the company, not the individual who has purchased the policy, is that right?

Mr. KARP. That is correct. The way it works is the trust fund is in the individual's name until they die. Then it accrues to the company. So the customer receives a 1099 each year and actually has to pay tax. So when the profit comes down—and, again, it is roughly 60 percent of whatever the trust fund is—it comes down tax-free.

Senator BRYAN. And the pre-need proceeds can be invested, as I understand it, Mr. Karp, is that right?

Mr. KARP. That is correct. Basically, what it is is out here in California they have a term which is “prudent investment.” Now, that is subject to someone's interpretation. There are no true guidelines as to where the money has to be invested.

Senator BRYAN. You anticipated my question. The individuals who are doing that investment pursuant to this “prudent investment” standard—what kind of licensing requirements, if any, are they required to meet?

Mr. KARP. None whatsoever. In fact, as I stated before, the president and owner of the Neptune Society never took a license test at all and he controls the entire trust fund.

Senator BRYAN. So you are telling us that the individuals who are responsible for investing these funds, other than the “prudent man” requirement, have no background in investments and are not themselves required to be licensed. Am I correct, sir?

Mr. KARP. That is correct.

Senator BRYAN. Now, you pointed out that indeed the owner was not licensed, but that there was someone who had a license that ostensibly was the individual that was supervising things, but you didn't see him in 3 years. Was that the thrust of your testimony?

Mr. KARP. Yes. He was not supervising the business.

Senator BRYAN. But under California law, is the licensee supposed to be onsite? Is he supposed to be there everyday?

Mr. KARP. Absolutely.

Senator BRYAN. But was not, so that is a matter of supervision or failure, I guess, on the State regulatory agency, whoever that is?

Mr. KARP. That is correct.

Senator BRYAN. Are the salespeople themselves, the people that are going out and selling these pre-need plans—are they licensed in any way?

Mr. KARP. Not in any way whatsoever.

Senator BRYAN. So you are saying that the only license required is that one license that an individual is supposed to have to conduct the operation, and in your particular instance this person was not around in the 3 years that you worked in the company?

Mr. KARP. That is correct. When I went into business for myself, I passed the funeral director's test which everyone is supposed to take. Other than that, none of my employees, including the salespeople, would have to be licensed.

Senator BRYAN. And may I take it that those are State requirements, sir? These are not Federal requirements. These are State requirements that we are discussing?

Mr. KARP. That is correct.

Senator BRYAN. Now, with respect to the problems that you pointed out with respect to body parts and the crematoria, is the situation that you described where these ashes may be commingled or not segregated—is that a widespread practice, do you believe?

Mr. KARP. Yes, it is. I had to go to someone's house and inform the woman one time through the Neptune Society that the ashes sitting on her mantelpiece were not her husband's.

Senator BRYAN. Are there State requirements in California as to how these ashes are to be handled?

Mr. KARP. Yes, but there is no accountability or direct supervision.

Senator BRYAN. No accountability.

Mr. KARP. In California, they are supposed to do an annual audit of the trust fund and the practices in that office annually. In the 3-plus years that I was at Neptune, they were there once.

Senator BRYAN. Tell us a little bit about this unsavory practice of selling body parts.

Mr. KARP. I don't know how widespread it is. I know it goes on. I know I was offered—even though I didn't have a crematory, I was offered to do something like that. I know they caught one major funeral home in Pasadena, CA, a few year ago, and there was a major trial here and I believe the people were punished appropriately. I don't know, but it does go on because of the demand and there is a lot of money involved.

Senator BRYAN. In your particular situation, the circumstances that ultimately resulted in your conviction and your incarceration, did that come about as a result of some investigation done by a State regulatory board or was it a law enforcement agency that ultimately discovered the situation that you have described?

Mr. KARP. No. What happened in my case was an individual who could not—

The CHAIRMAN. We will take a temporary recess to see if this is the end of the questioning of this witness or if we can—

Senator BRYAN. He is about ready to use his own pre-need plan, I think, Mr. Chairman.

The CHAIRMAN. Senator Bryan, would you ask your question again?

Senator BRYAN. Yes.

Mr. Karp, can you hear me all right, sir? We are not hearing you just yet. I think we are going to get an audio pickup here.

Mr. Karp, can you hear me, sir? We are having a little difficulty in the transmission. You are coming across—

Mr. KARP. I can hear you fine now. Can you hear me?

Senator BRYAN. I can indeed, I can indeed.

Mr. Karp, the question that I had—and I will just have one other, Mr. Chairman, and then I will yield my time back—was in terms of how your own situation came to light, and you were about to tell us how that occurred. The preface to my question was that a State regulatory board, the State funeral directors board or whatever it is called in California, are they the ones that discovered the circumstances leading to your conviction, or how was that done?

Mr. KARP. No. When I realized I could no longer continue in business, I voluntarily handed in my license and I told the funeral board that I would try and make arrangements to take care of my customers. That is when I went to work for the Omega Society, and we actually handled three or four cases which I took care of personally. Then when we could no longer do that, I went to another company called Secure Cremation and they handled three or four cases for me. And I paid for that personally until I could no longer do it financially because I had lost most of my money and most of my capital in the business that I was in.

The way that they caught up with me and with the borrowing of the trust fund is that a customer family could no longer service—when a person died, they couldn't get service. They called Omega, because they were notified to do that by me, and Omega said they won't handle it. They called Secure, which again was notified by me in a letter. They said they couldn't handle it, so they had nowhere to go and they called the police. The police called me. The Ventura police detective called me. I came in voluntarily to talk and they arrested me.

Senator BRYAN. I thank you, and a last question to make sure that I have got this. Mr. Karp, you are telling us that when you worked for Neptune that the owner was not licensed, the sales representatives were not licensed, the individuals who were investing the money for the pre-need trust funds were not licensed. Am I correct, sir?

Mr. KARP. That is correct.

Senator BRYAN. And the only one that was licensed was this absentee figure that you never saw during the course of the 3 years that you worked there?

Mr. KARP. That is correct, sir.

Senator BRYAN. I thank you very much, Mr. Karp, and I thank you, Mr. Chairman.

The CHAIRMAN. Mr. Karp, this is Senator Grassley again. In your testimony, you placed great emphasis upon protecting trust funds. Is this because there is such a great potential for abuse, and if so, what are some of the worst abuses of trust funds that you have observed?

Mr. KARP. Well, I know that people borrow from the trust funds on a regular basis for their own personal use. Sometimes, they can put it back, hopefully, and sometimes I am sure it doesn't get back the way it is supposed to. I know of one case where they bought

a pleasure boat out of the trust fund moneys, saying that they would use that boat to scatter the ashes, although that isn't what happened.

The CHAIRMAN. From your testimony, it is clear that you believe that there is a serious danger that cremated remains can get mixed up. Can you provide some examples from your experience?

Mr. KARP. Well, as I stated before, I know one case that I particularly had to go take care of which ended up in a lawsuit which was settled out of court. I had to go to the woman's home after we found the right body was still in the holding facility. I went to her home and told her that the ashes on her mantel were not her husband's. The woman collapsed in front of me and it was a very, very difficult situation. This is not that unusual because there is a tremendous amount of sloppiness between the cremation pick-up service, the holding facility, and the crematory where the body ends up.

The CHAIRMAN. My next question dealt with, I think, some of the things you just mentioned, but if there is any further thing you could tell us because from an earlier interview you said that many cremation company problems occur at the holding facilities. Could you explain what you mean by that and basically how it happens?

Mr. KARP. Well, there was one case recently, again, from a company that had been in business for over 20 years where the State became aware of the holding facility being in shambles. The refrigerated holding facility holds six to eight bodies. There were at least 20 bodies in this holding facility, with bodily fluids all over the floor, people lying on the floor in sheets, et cetera. It was totally gruesome, and the State became aware of this and I know it was blown up in the newspapers out here. I don't know the end result of that, although I do know that the individual is still licensed and is still doing business.

The CHAIRMAN. In your experience, did the Government visit holding facilities regularly? I guess you have described the worst abuses at holding facilities, but obviously the Government missed these and has not inspired any sort of good business practices, right? Did Government visit holding facilities regularly?

Mr. KARP. No. In the 3 years I was at Neptune, they never visited the holding facility, and in the 2 years I had my own company they never visited my holding facility.

The CHAIRMAN. You mentioned in an earlier interview that you were able to get around the cooling-off period for voiding contracts by selling memberships in the society. Could you explain how this worked in more detail?

Mr. KARP. Sure. There is a Federal law, I believe, that gives you a 3-day cooling-off period, which basically that the customer has 3 days in which to change their mind on anything sold in the home. All of the cremation plans basically were sold in the home. The way to get around that, or the way that we got around that was that the contract was not actually a contract, but simply an application to join the society. And the application was consummated in the office after the salesman left the home, so there was no 3-day cooling-off period.

The people, if they canceled the next day, were only entitled in writing in the application to receive only the trust money portion and not the other portion of the contract. And, in fact, the trust

moneys were funded last. The first moneys that came in would go to overhead and then the trust fund would be funded, because some people did not pay it all in full, but paid off over a period of time.

The first moneys that came in were able to be used for overhead and then when a certain amount was reached, then the trust fund would be funded. If they canceled, they were only to receive the trust fund moneys, plus the interest.

The CHAIRMAN. Are cremation pre-need agreements portable, and what happens then if a family member would move away or dies without telling other family members about the plan?

Mr. KARP. In practice, what happened with that, and that happened often where people were not informed, it simply became the profit of the funeral director. In some cases where they were informed—let's say they were visiting someone in Ohio and they died there. There would be an exorbitant amount of money charged on top of the original contract which stated that they would never have to pay any more.

The CHAIRMAN. What other suggestions do you have for Federal and State Governments with regard to how they can better protect consumers and regulate the industry? That is my last question.

Mr. KARP. Well, I believe the contract should state that they should not have to pay any more in any event. And I believe you can easily set up these days an 800 number 24 hours a day, 7 days a week, and if someone died in Columbus, OH, I am sure I could call someone in that area to handle the departed in a very normal way. And they would be glad to do it because it would be a customer they didn't have before. I think a national company could be set up very easily, and that was one of my goals, but it didn't happen, obviously.

The CHAIRMAN. Senator Bryan.

Senator BRYAN. That is a good question to end on, Mr. Chairman. I thank you.

The CHAIRMAN. Before we separate Mr. Karp, let me consult Senator Breaux' staff.

Mr. Karp, Senator Breaux had to go to visit with another Senator and is coming back later on this meeting, but it is not necessary for us to hold you by video conferencing for further questions. But Senator Breaux may submit some questions to you for answer in writing. We would appreciate it if you would respond accordingly.

Mr. KARP. Certainly.

The CHAIRMAN. Thank you, Mr. Karp, and thank you for your cooperation with our committee staff as well, and thank you for what you have given us from your practice in the industry so that we are aware of some of the worst abuses that go on.

I now call our second panel, which will be a really large panel. We are going to hear from everybody on the panel before we go to questioning. I am going to start with Ms. Danell Pepson, of Leesburg, VA; Ms. Toni Moore, President of Paradise Memorial Park Cemetery Memorial Fund, of Santa Fe Springs, CA.

Would you please all come, even though I haven't mentioned your name yet, and sit before your name plate, please?

Then we have Ms. Sheryl Lankford, a funeral director from DeLand, FL; Mr. Daryl J. Roberts, a former cemetery owner and funeral director, as well as author of a book called *Profits of Death*, and he is from Scottsdale, AZ; Father Henry Wasielewski, who runs the Interfaith Funeral Information Committee; Dr. Robert Shreve, a representative of AARP, a consumer advocacy organization for senior citizens; and Mr. Lamar Hankins, President of FAMSA-Funeral Consumer Alliance, of San Marcos, TX.

I think in the order that you are sitting is where we would like to have you testify, so we start out with Ms. Pepson and go across here and end with Dr. Robert Shreve. Originally, I said we didn't have these lights to go by. The yellow will come on after 4 minutes and the red after 5 minutes. Now, I don't expect you to stop in the middle of a sentence after the 5 minutes are up, but would you please finish a thought at that point or do some sort of summarizing at that point?

Thank you very much, and you are going to have to have the microphone almost right in front of your mouth as you are speaking out because it doesn't carry very well otherwise.

STATEMENT OF DANELL D. PEPSON, LEESBURG, VA

Ms. PEPSON. My name is Danell Doreen Pepson. I am 38 years old and I live in Loudon County, VA. I am a victim of what, in my opinion, is the unscrupulous and reprehensible practices of the funeral industry.

First, let me preface my remarks by stating that what I am about to detail is very distasteful. However, it is of such great importance that I ask you for your deliberate examination of the facts of my case.

On April 1, 1983, I purchased a solid copper casket for the above-ground burial of my grandmother, Bertha Ann Pepson. In the early part of 1990, my grandmother's body had decayed and her body/embalming fluids had begun to run out of her casket and sealed mausoleum in Oak Lawn Cemetery, in Uniontown, Fayette County, PA.

It was not until November of that same year that I learned of this problem. During the interim 9 months while this fluid continued to leak out of the casket and mausoleum and into the vegetation and soil around the burial site, I continued to visit there and tend to the flowers that I had planted yearly in front of the mausoleum. It should be noted, that I recently learned that Oak Lawn Cemetery is no longer owned by the same person(s) who were parties to my law suit. In my opinion, the current owners of Oak Lawn Cemetery in Uniontown, Fayette County, PA operate in a professional manner and I have no complaint regarding their practices and procedures. I was never told of the problem by the undertaker nor the cemetery personnel, both of whom had been aware of the problem in April 1990.

I was never warned to stay away. In fact, I continued to visit there and scrape the thickened fluid from the mausoleum ledge with my hand spade. I erroneously thought that the substance was grass clippings that had lain on the mausoleum and rotted in the summer heat.

In the fall of 1990, I eventually got my grandmother's rotted remains on my hands and clothes. At this point—excuse me.

The CHAIRMAN. Take your time.

Ms. PEPSON. At this point, her remains had leaked down over the mausoleum ledge and into the mums which I had planted there. The air around the mausoleum was malodorous.

After this experience, I contacted the undertaker who had buried my grandmother and subsequently learned that my grandmother had been in an obvious state of decay for the greater part of the year and had indeed been running out of her casket all of those long months.

In April 1990, the undertaker disinterred my grandmother and placed an absorption powder in the interior of her casket and inside the front of the mausoleum door in an attempt to stem the flow of her decaying remains. In my opinion, this initial disinterrment was improper and was a feeble attempt to cover up a serious breakdown of the body, casket, and mausoleum.

It should be noted that in order to get my own grandparents legally disinterred, I, as the executor of my grandmother's estate, personally had to appear before the Fayette County Court of Common Pleas and offer testimony in order to obtain court permission and a proper disinterrment permit. I am outraged at the undertaker's conduct and that of the cemetery management. It is unacceptable and unconscionable.

Not only did I visit Oak Lawn Cemetery, but many other people visited the cemetery. I had personally had friends visit there with me as I tended to the graves of my loved ones. I can think of nothing more filthy, unsanitary, and distressing than the fact that decaying corpses interred in above-ground mausoleums are permitted to rot and leak out into the open spaces and air in this very public place.

Clearly, this violates not only public health codes, but also a moral code. When did we as a society place such disregard and lack of dignity with regard to our dead? My grandparents have been violated in their death. They no longer rest in peace in their family plot alongside their only child, my father, Wendell John Pepson.

I had to have my grandparents cremated and place their ashes elsewhere. The leakage of my grandmother's remains was permitted to continue for so long that her remains had leaked into the adjoining vault and under the steel casket of my grandfather. The resulting rust compromised the integrity of his casket and burial, and I could not fathom the thought of having to go through this nightmare yet again.

I have also been violated. What torment knowing that you have had the rotting remains of your loved ones on your hands and clothes. I do not forget what it looks and smells like when you rot in your grave. I have no peaceful place to visit and memorialize my loved ones any longer. I will never forget nor reason away this atrocity. How many more of the living must live this unending nightmare?

You have the power to ensure that these after-death goods are suitable for above-ground burial, that stringent regulations are put into place to protect both the users of these products and the consumers who unwittingly purchase these products and place their complete faith and trust in the hands of the undertaker and the manufacturers of these products.

I have learned many things about this industry. I now know what happened to my grandmother's remains is not an isolated incident. There appears to be serious problems with above-ground burials and protective sealer caskets. Experts within the field have told me that the problem with above-ground burial is "just beginning to rear its ugly head," "that above-ground burial, a recent trend, has caused all kinds of trouble all over the country, both here and in Canada."

"With above-ground burial, the atmosphere changes. You have outside temperatures constantly changing from zero degrees to 100 degrees during a year. With a sealer casket, the human remains being 90 percent liquid in life has little change after death. With the liquid confined in a sealed environment and a constant change of temperature on the outside of the casket, the body will gas off moisture and chemicals that were used to prepare the body, and these liquids will collect on the bottom of the casket and, being acid, will corrode or rust the bottom out of the casket."

I have also learned through an environmental health specialists with the Pennsylvania Department of Health that a local cemetery removed both a corpse and a leaking casket from a mausoleum without court or family permission. They then locked the corpse and casket, the casket lid propped open to air-dry the casket out, in a garage overnight. The cemetery worker that told both the environmental health specialists and myself about the incident said that it was a "fly feast" in the garage the next morning.

The cemetery employees placed the leaking casket and corpse in a disaster pack, a huge plastic bag with an absorption pad in the bottom, and reinterred the body without proper permits or authorization. It should be noted that this corpse had been interred for a period of 2 years before this problem surfaced.

I have volumes of information relating to problems with above-ground burial. In my opinion, the funeral industry is aware of these problems and they are keeping this information from consumers. It is also my opinion that the funeral industry as it exists today is perpetuating the biggest fraud upon the American consumer in the past and current century. Isn't it time we take a good, hard look at this industry? One day, we will either all purchase these goods and services or have them purchased for us. Surely, this is of great public interest and good.

I ask you—no, I beg you to hear my words and to feel my pain. You have the power to stop this abuse. Please do not let me live the rest of my life with the knowledge that all of this suffering has been for mere suffering's sake. I fought so hard and for so long that in the end the legal system overwhelmed me and I could not continue to fight. I had many legal hurdles placed before me during those 7 years of litigation. Still, I thought that the truth would prevail and that one so aggrieved would find some sense of justice and closure.

To that end, I have been sorely disappointed. In my opinion, the legal system failed to protect me and my right to a jury verdict. My experience with this case and with this subject matter has changed my life fundamentally and forever. During my research of the subject, I found a very profound passage within a legal publication. In that case the court stated:

So long as humanity shall live in the domain of the spirit as well as of the flesh and endow mortal remains with the reverence approaching sanctity, it must follow that the law will come to the aid of him who has suffered mental anguish by the carelessness and wantonness of another.

I ask for this and I thank you.

The CHAIRMAN. We thank you for your testimony. We also apologize for the situation as it affected you and for your going through the agony another time telling the Nation about it. We thank you for doing that.

Ms. PEPSON. I appreciate the opportunity to be here.

[The prepared statement of Ms. Pepson follows:]

Statement of Danell D. Pepson

My name is Danell D. Pepson. I am thirty-seven years old and I live in Loudoun County, Virginia. I am a victim of what, in my opinion, is the unscrupulous and reprehensible practices of the funeral industry.

First let me preface my remarks by stating that what I am about to detail is very distasteful, however, it is of such great importance that I ask for your deliberate examination of the facts of my case.

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It should be noted, that I recently learned that Oak Lawn Cemetery is no longer owned by the same person(s) who were parties to my law suit. In my opinion, the current owners of Oak Lawn Cemetery in Uniontown, Fayette County, Pennsylvania operate their cemetery in a professional manner and I have no complaint regarding their practices and procedures.

I was never told of the problem by the undertaker, nor the cemetery personnel, both of whom had been aware of the problem in April 1990. I was never warned to stay away and in fact I continued to visit there and scrape the thickened "fluid" from the mausoleum ledge with my hand spade. I erroneously thought that the substance was grass clippings, that had lain on the mausoleum and rotted in the summer heat.

In the fall of 1990 I eventually got my grandmothers' rotting remains on my hands and clothes. At the point, her remains had leaked down over the mausoleum ledge and into the mums which I had planted there. In the course of removing the finished flowers, I carried them against my person to a garbage receptacle in the cemetery. The air around the mausoleum was malodorous. After this experience, I contacted the undertaker, Robert Oats, and subsequently learned that my grandmother had been in an obvious state of decay for the greater part of the year, and had indeed been running out of her casket all those long months!

In April 1990 the undertaker disinterred my grandmother and placed an absorption powder in the interior of the casket and inside the front of the mausoleum door, in an attempt to stem the flow of her decaying remains. In my opinion, this initial disinterment was improper and was a feeble attempt to "cover up" a serious breakdown of the body, casket and mausoleum.

It should be noted, that in order to get my own grandparents legally disinterred, I, as the executor of my grandmother's estate, personally had to appear before the Fayette County Court of

Common Pleas and offer testimony to obtain court permission and a proper disinterment permit.

I am outraged at the undertakers' conduct and that of the cemetery management! It is unacceptable! Not only did I visit Oak Law Cemetery, but many other people visited this cemetery. I, personally, had friends visit there with me as I tended to the graves of my loved ones. I can think of nothing more filthy, unsanitary and distressing, than the fact that decaying corpses interred in above-ground mausoleums, are permitted to rot and leak out into the open spaces and air in this very public place.

Clearly, this violates not only public health codes but also a moral code. When did we as a society place such disregard and lack of dignity with regard to our dead? My grandparents have been violated in their death. They no longer rest in peace, in their family plot along side their only child, my father, Wendell J. Pepson. I had to have my grandparents cremated and place their ashes elsewhere. The leakage of my grandmothers' remains was permitted to continue for so long, that her remains had leaked into the adjoining vault and under the steel casket of my grandfather. The resulting rust compromised the integrity of his casket and burial and I could not fathom the thought of having to go through this nightmare yet again.

I have also been violated. What torment knowing that you have had the rotting remains of your loved ones on your hands and clothes. I cannot forget what it looks and smells like when you rot in your grave. I have no peaceful place to visit and memorialize y loved ones any longer.

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I have learned many things about this industry. I now know that what happened to my grandmother's remains is not an isolated incident. There appear to be serious problems with above-ground burials and protective sealer caskets. Experts within the field have told me that the problem with above-ground burial is "just beginning to rear it's ugly head." That "above-ground burial, a recent trend, has caused all kinds of trouble all over the country, both here and in Canada. With above-ground burial, the atmosphere changes. You have outside temperatures constantly changing from 0 degrees to 100 degrees during a year. With a sealer casket, the human remains being 90% liquid in life, has little change after death. With a liquid confined in a sealed environment, and constant change of temperature on the outside of the casket, the body will gas off moisture and chemicals that were used to prepare the body and these liquids will collect on the bottom of the casket and will, being acid, corrode or rust the bottom out of the casket."

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garage the next morning. The cemetery employees, placed the leaking casket and corpse in a disaster pack (a huge plastic bag with an absorption pad in the bottom) and re-interred the body without proper permits or authorization. It should be noted that the corpse had only been interred for a period of two years before this problem surfaced.

I have volumes of information relating to problems with above-ground burial. In my opinion, the funeral industry is aware of these problems and is keeping this information from the consumers. It is also my opinion, that the funeral industry, as it exist today, is perpetuating the biggest fraud upon the American consumer in the past and current century.

Isn't it time we take a good hard look at this industry! One day, we will all either purchase these goods and services or have them purchased for us. Surely, this is of great public interest and good!

I ask you, no I beg you to hear my words and feel my pain. You have the power to stop this abuse, please do not let me live the rest of my life, with the knowledge that all of this suffering has been mere sufferings' sake....

I fought so hard and for so long, that in the end, the legal system overwhelmed me and I could not continue to fight. I had many legal hurdles placed before me during those seven years of litigation. Still I thought that the truth would prevail and that one, so aggrieved, would feel some sense of justice and closure. To that end, I have been solely disappointed. In my opinion, the legal system failed to protect me and my right to a jury verdict. My experience with this case, and with this subject matter has changed my life fundamentally and forever...

During my research of this subject, I found a very profound passage within a legal publication. In that case the court stated, "So long as humanity shall live in the domain of the spirit as well as of the flesh and endow mortal remains with the reverence approaching sanctity, it must follow that the law will come to the aid of him who has suffered mental anguish by the carelessness and wantonness of another.

The CHAIRMAN. We will now go to Ms. Moore.

STATEMENT OF TONI MOORE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, PARADISE MEMORIAL PARK CEMETERY MEMORIAL FUND, SANTA FE SPRINGS, CA

Ms. MOORE. Thank you, Senator Grassley, for inviting me and for hearing my story. My name is Toni Moore and I am now President and CEO of Paradise Memorial Cemetery Memorial Fund.

Just to give a little background of how I got to this point, approximately 5 years ago, in June 1995, I was watching the evening news and saw the cemetery where the majority of my family, the Stewart family, was buried. The story was horrifying. It began with a brief statement, something to the effect, "cemetery shut down by the State Cemetery Board." Oh, yes, I forgot to say this is the State of California, where Mr. Karp has so eloquently shared his story.

The cemetery was closed, as I said, by the State Cemetery Board. There was a posted sign saying that the cemetery was closed, with a number to call. I tried to call this number on several occasions over a couple of days with no success. Finally, I called at that time Governor Wilson of the State of California's office, his local office in Los Angeles. The spokesperson advised me that I should call the local representative, Grace Napolitano. The cemetery was in her district.

I called her office. I was told to call my representative's office, who at that time was Phil Hawkins. Instead of calling his office, I got in my car and went to his office. At this point, I wasn't taking anything sitting down because I needed to know about my family. When I went to his office, he wasn't there. I saw one of the representatives who told me, you know, there wasn't much he could do. It wasn't in his district, but they would see if there was something that they could do on my behalf.

I went back a second day to the cemetery. I put in calls again to the cemetery number that was posted. About this time, they had some informational meetings that were held at the high school in Santa Fe Springs, close to where the cemetery was. The meetings were hosted by the State Cemetery Board, at that time the chief executive officer, was Ray Guinta. Ray Guinta, in my opinion, was a good man who unfortunately exposed a great tragedy for the State of California, and his life was made miserable along with ours.

He tried to make assurances to family members that they would find out what was going on. Still, we were being plagued by the headlines in the papers and the news short blips of digging up of graves, reselling of graves, bone fragments being found on the grounds, mass burials of bone fragments by, of all people, the State Cemetery Board. We weren't even given an opportunity to find out if it was one of our loved ones. We were locked out. They went in, closed the cemetery, and did a mass burial.

At this point, I got my family involved. We have a very large family with southern roots. We made a family list of members that were buried at Paradise and it came to over 30 members. This may still not be all; we are still remembering other close family members and in-laws. It took hours to do this, but the horror continued as we went through and made this list.

We made our police reports that we turned over to the Norwalk Sheriff's Department. We made our complaints for the Department of Consumer Affairs. We started to write to people. We wrote the district attorney of the County of Los Angeles. We wrote our representatives where our family members lived. We wrote Phil Hawkins, Grace Napolitano, Willard Murray, Juanita McDonald, Dianne Feinstein, Theresa Hughes, the State Department of Consumer Affairs, and a host of others. Anybody that I could find in the phone book that I thought might represent me in some kind of way in the State of California, I wrote them a letter.

Meanwhile, we got very little help. I testified before different committees in the State of California Legislature, but like I said, we got little help. Finally, the culprits, the owners of the cemetery who had sold and resold and dug up many of my family members' graves that were desecrated—my baby brother was buried in 1994. He was a big man and we bought a 3X grave which should accommodate a 3X casket. However, we learned that where he was put was a normal grave and he was interred in a grave that belonged to someone in 1940. To this day, we don't know the owner of the grave, and unfortunately we probably will never know.

Litigation ensued. The owners were arrested, and that is how I became President of Paradise Memorial Park Cemetery in Santa Fe Springs. From the litigation, we obtained \$2.1 million to put in trust to keep the cemetery open. It is unfortunate for many of my family members because they never want to go back to the cemetery because they don't know where their loved ones are buried.

I have an aunt that has a double plot and it was found out to be a recycled plot; it belonged to someone in the 1940's. She can't use it. I have several aunts that have children, sisters, brothers, husbands buried at that cemetery. My mother's mother is buried there. I have two brothers buried there. It just goes on and on and there is no ending.

Just 2 weeks ago in the State of California, another cemetery that should have been investigated at the same time as Paradise, because I understand it was on a list of problem cemeteries, they found some of the same practices and they had to close the cemetery just 2 weeks ago. Paradise happened 5 years ago.

What I would recommend to every consumer is, consumer, please beware. Don't trust when it comes to dollars and cents. Read, read, read. I don't really recommend pre-need. We have already heard why we shouldn't buy pre-need. Have a person other than a family member as your advocate, get a second opinion, shop around. If you are not able to have someone shop for you, please, please, please just don't trust. Take that moment even though you are grieving. Just always, always ask questions. Encourage the mortuary representative to come to your home with the contract before you make any arrangements to go to the mortuary. Discuss it with your family. Don't make these decisions that are so costly, that are life-changing.

I am a ceterian now and I don't have a clue, but I am doing the best that I can from day to day, and it is not easy. They would have closed our cemetery because there was no money, but we fought. We didn't get the settlement I think we should have gotten, but I needed the cemetery because my baby brother is there, my

second brother is there, my grandmother is there, my great grandmother is there, and I needed to be able to go back.

There are many, many victims in California of Paradise Memorial Park. They don't feel that way. They did not opt to have the cemetery remain open, but I personally kept that cemetery open until the litigation was finalized and I don't mean to see it closed. I beg of you, please give us some Federal legislation because these things are happening everywhere.

The CHAIRMAN. Thank you, Ms. Moore.

Ms. MOORE. Thank you.

[The prepared statement of Ms. Moore follows:]

TESTIMONY OF

TONI MOORE

before the

SPECIAL COMMITTEE ON AGING

APRIL 10, 2000

Statement of Toni Moore

Events of my involvement in the form of PARADISE MEMORIAL PARK CEMETERY MEMORIAL FUND, a non profit organization created to keep Paradise Cemetery open.

Approximately five years ago, June 1995, I was watching the evening news and saw the cemetery where the majority of my family (the Stewart family) was buried. The story was horrifying. It began with a brief statement something to the effect "Cemetery shut down by the State Cemetery Board" - details to follow. This was the evening news so no real details were available. I remember this being mid-week following Fathers' Day. I immediately got into my car and drove to the cemetery which is approximately 9 miles from my home. When I got to the cemetery news media were all around and the gates to the cemetery were locked. No one had any answers. There was a big sign posted at the top of gates to the cemetery which read "Closed" and a phone number listed to call for information.

I called this number almost nonstop all night with no answer, not even an answering machine. The next morning I went back to the cemetery to find the gates locked again. I went back to my home and started calling the number again and again with no response. This continued most of the day. Finally on the mid-day news there was a bulletin that there would be a community informational meeting at the High School in Santa Fe Springs where the State Cemetery Board would give us some information regarding the closure and status of the cemetery. That evening I went to the meeting that was held in the gym of the high school along with hundreds of other angry and perplexed families and friends of loved ones buried in Paradise. The horror was unbelievable. We were told that a mound of dirt in the rear of the cemetery was full of casket fragments and some remains from what appeared to be older burials at the cemetery. No one knew whose graves were disturbed and at this point no one was talking much to help people find out. The meeting turned into a very angry group of people demanding answers. The meeting was ended with many unanswered questions and broken promises from the State Cemetery Board Chief Executive Officer, Ray Guinta. We were told to go home and watch the news for developments. Since I have/had over 30 relatives buried at this cemetery that was not good enough for me. I continued trying to reach the posted number for the third day with no success. At this point I became enraged. I looked up the governor's number for Los Angeles and called the listed number and asked to speak to then Governor Wilson. A spokesperson asked me what it was regarding. I explained that I had been calling a number listed for the State Cemetery Board of this particular cemetery for the past three days with no answer. Since this was a government office I felt there should at least be an answering machine. I was told by the Governor's office to call the office of Assemblyperson Grace Napolitano office whose district the cemetery was located in. When I called her office I was told to call my representative who was Phil Hawkins. I called Phil Hawkins' office and was told to call Ms. Napolitano's office since the cemetery was in her district. Instead of taking this advice I got into my car and went to Mr. Hawkins office since he was my representative. I demanded to speak to him regarding the run around of the governmental agencies and demanded that he intercede on my behalf letting him know I was a registered voter and a taxpayer. His response to me was "well since the cemetery was not in his district he would see what if anything he could do on my behalf". He did write a letter to Mr. Guinta, the CEO of the Board asking him to assist me, although I did not find this out until several days later. I remained horrified. How could this be happening to my family? I just kept asking

myself what was going on. It all seemed like a bad dream and I couldn't wake up. It was going on to the fourth day with no real information. I continued to go to the cemetery and got no answers. The lines at the cemetery were long with people seeking information pertaining to their family decedents. I made out complaints and questionnaires requested by the State Cemetery Board. I demanded to speak to the head of the cemetery board whom I was told was at the cemetery. I waited all day to speak with him. I checked my home telephone for messages hourly with no results, no one had called. Everyday there was stories in the paper with more horrors. DIGGING UP OF GRAVES; RESELLING OF GRAVES; BONE FRAGMENTS BEING FOUND ON THE GROUNDS. MASS BURIAL OF BONE FRAGMENTS BY BOARD and on and on. Then the final straw for me - CLOSURE OF THE CEMETERY! I started calling my family. I arranged a family meeting. We met on the first Saturday following the breaking news.

Now the family was involved and we organized. We made a list of family members that were buried in Paradise. We listed burial dates to the best of our knowledge. We divided the list into groups with family representatives responsible to get the burial data from the cemetery in order to file police reports. We went to the cemetery to get the records. It took hours. The horror continued. We found different information than what we had. We made out Police reports and filed them with the Norwalk Sheriff Department. We started writing our representatives. We wrote the district attorney. We began calling our representatives and senate representatives both local and federal (PHIL HAWKINS, GRACE NAPOLITANO, WILLARD MURRAY, JUANITA MCDONALD, DIANE FEINSTEIN, THERESA HUGHES, THE STATE DEPARTMENT OF CONSUMER AFFAIRS). We got responses from all with no answers or assistance. Then I got a call back. It was a representative from Grace Napolitano's office. I spoke with Danny and he wanted to know if I wanted to be on an advisory committee dealing with the situation at the cemetery. I declined since I had medical problems and let them know that my cousin Linda George whose father was buried at Paradise had agreed to be the family representative. I felt we were on the right track now and we would get some answers. That was not the case.

The cemetery board could not keep the cemetery open due to lack of funding and the board itself was without funding. The CEO of the cemetery board had asked Governor Wilson for emergency funding but it was denied. Until this point we (my family) had no idea a special entity called the State Cemetery Board and the State Board of Funeral Directors and Embalmers existed. We were shocked to find out that there were governmental agencies that were in place to regulate cemeteries and funeral homes or that we could register complaints with them. We found out that the complaints we registered with the Cemetery Board regarding the cemetery were never even looked at. (No funding we were told)

There was another community information meeting at the Sheriff's facility. Again nothing was resolved and more promises for answers and assistance from the State were made and unfulfilled. A couple of days later the sheriff's department was removing the records from the premises. Again I asked myself, What is going on? We demanded a meeting with the State Cemetery Board or the CEO. We heard nothing. We called the press and met with a reporter from the Long Beach Press Telegram who had done an article on another cemetery with problems in Long Beach. We told him we were afraid they (the state) would just close the cemetery and that would be that. He told us "that can't happen" those were his words, the state could not just close the cemetery. I received a

call from the reporter we had spoken with urging me to get to the cemetery. He informed me they were closing the cemetery. On one Wednesday night in mid-July the state cemetery board met at the Cemetery to close it. I rushed to the cemetery. The police were securing the property. I demanded entry into the grounds. I was told only the advisory committee was allowed in. I threatened to run my car through the gates so I was allowed entry. To my surprise the Cemetery Board was there, yes at the cemetery. I burst into the cemetery office and got on the phone to start calling my relatives. Thank God it was Wednesday night so many of them were at Mid-week Bible Study at church. I told them to get to the cemetery immediately because it was being closed. We knew once they closed the grounds it would probably never open again. That night the Stewart family decided to do whatever it took to keep the cemetery open. Lawyers were hired and the cemetery board had to be sued to keep the gates open. Because of the litigation the grounds remained open with funding from the ongoing litigation.

I followed the litigation. I went to all of the status conferences. I argued with the attorneys in the case. I approached the Judge. My family and I made several trips to Sacramento where I testified before whatever committee I could. My family personally kept the cemetery open from mid-August until November 2, 1995 at which point a court receiver was appointed.

Mor bad news for my family. There was another death in the family. The family had to decide on another cemetery. After over 40 almost 50 years of Paradise being the family cemetery we had to look for another cemetery. We knew from our investigative measures that many of our family graves had been disturbed, we had purchased recycled graves and some family members were not in the location we had thought they should be (were left). I have several aging aunts that remain devastated over this. Grave space purchased and unavailable for use.

Because of the litigation we will be able to keep the grounds open. A non-profit was formed to manage and care for the embellishment of the cemetery in February 1999. The non-profit took over the management of the cemetery in April of 1999. I was the Incorporator and President/CEO. Most of my family has since decided they do not wish to visit the cemetery in the future. My oldest Aunt, Lillie Jones really grieves because this is where her mother, two children four sisters, two brothers, a brother-in-law, four grandchildren and many nieces and nephews totaling over 30 (all taken through the gates of Paradise). She has decided never to visit the grounds again. This is the biggest tragedy ever. Our elderly are being victimized daily by the death care industry. Since this tragedy was disclosed and litigation began I have had a sister die, an Aunt and an Uncle. In all cases we had to call the mortuary on the carpet.

What I would recommend to every consumer: **CONSUMER BEWARE!!!!**

Don't trust when it comes to dollars and cents, **READ, READ, READ.** I don't really recommend pre-need. Have a person other than family as an advocate. Get a second opinion. Shop around. If you're not able have someone shop on your behalf. If you're not able at the time, have someone available to ask questions for you. Encourage the Mortuary representative to come to your home with the contracts before going to make the arrangements at the Mortuary.

Thank you for the opportunity to share my story.

The CHAIRMAN. Before we hear from Ms. Lankford, we are going to preface her statement with a video news clip from WFTV, Orlando, that discusses the Carriere pre-need sales case in Florida. We will go to that video at this point.

[Videotape shown.]

The CHAIRMAN. Now, we go to Ms. Lankford.

STATEMENT OF CHERYL L. LANKFORD, LANKFORD FUNERAL HOME, DELAND, FL

Ms. LANKFORD. Good afternoon, Senator. I thank you all very much for the opportunity to share Ms. Lyndall Carriere's case in front of you today, as it was heard in Lakeland, FL. May I first say Ms. Lyndall Carriere is still alive. She is incapacitated and is in the care of her niece as we speak.

My name is Cheryl Lankford. I am a licensed funeral director and embalmer for over 18 years in the State of Florida, living in DeLand. In 1998, I attended a funeral directors convention in Orlando, FL, where I was introduced to a gentleman by the name of Mr. Scott Langston, who is an attorney in Lakeland, FL. Mr. Langston asked if I would review some contracts that involved the sale of funeral services and merchandise that belonged to a client that he was assisting.

I noticed they were contracts written by a firm by the name of SCI, which stands for Service Corporation International, based in Houston, TX. This is the company that buys funeral homes and cemetery property throughout the United States and some overseas locations. It is my understanding that Mr. Langston was in the process of estate planning for Ms. Lyndall Carriere when someone from her bank called to alert him that large amounts of checks were being written out of Ms. Carriere's account to the Glen Abbey Memorial Gardens and Funeral Home.

Ms. Carriere's husband died in January 1995. Mr. Langston has shared with me the fact that Ms. Carriere suffered a stroke in 1992 and that her niece came down to assist her in arrangements for her husband, as she did not feel comfortable with handling monetary transactions of this nature. She and her niece met with the funeral director and a gentleman by the name of Mr. Alex McGee, who was a funeral counselor at the funeral home.

Mr. McGee was to meet with Ms. Carriere within the next few weeks to deliver papers. It is the practice at this point of the visit also to try and get the family to pre-pay their funeral expenses, and this was the job that Mr. Alex McGee would take part in. The first contracts that were written at the time of the agreement were for Mr. Carriere's cremation, cemetery property, and what they call a niche bench. The niche bench is to be placed at the gravesite so anyone visiting can have a place to rest and is a common purchase by a family member.

On this contract, I noticed it was not completed in the proper manner, as prices were marked through and incomplete information was on top. There are specific requirements in the State of Florida when writing a pre-need trust agreement and one of them is that no blank spaces be left, no mark-through of prices be made, and if so, the trust is to either be initialed by the purchaser or a

new trust would be written in front of that person. This was not done even on Mr. Carriere's agreement.

On February 15, 1995, the first contract was written with regard to the services and merchandise for Ms. Carriere by Mr. McGee. Mr. McGee is a commissioned sales counselor, and the more he writes monetarily, the more he stands to make. This contract was for the casket made of solid copper, a vault to place the casket into the ground, as this is a State requirement, and what I believe was the purchase of cemetery property for herself at this time.

It is not uncommon for one spouse to be cremated and the other buried. That is a choice. I was also told that Ms. Carriere's niece was not present at the time of this purchase. This contract was for \$15,331.35, which is a large sum for a family member to buy, given her state of mind and the loss of her husband. Mistakes were made all over this contract. No initials appeared by Ms. Carriere, and the information was again incomplete by the standards of filling out a trust document.

A trust is written on sometimes triple or 4-page self-copying paper, so the family would have a copy, the funeral home a copy, and the trust department gets a copy. I noticed that on the top copy all of the marks that were made were crossed through, but on the bottom two or three copies there were no marks at all.

On the same day, a second trust was written for the trust this time of the funeral services themselves for Ms. Carriere. If a firm owns both a funeral home and cemetery property in the State of Florida, they are permitted to write two different types of trusts, one for the funeral home and one for the cemetery. The reason is that the State allows the company to receive 30 percent of the cost of the contract up front to pay the counselor salaries and to use as operating expenses for the firm. The remaining 70 percent must be trusted.

The total of the contract services at this time were \$3,655, and again in my practice they were not filled out properly. But, in my opinion, Ms. Carriere would have everything necessary for her future needs, regardless of the cost, which I still feel was expensive.

On February 24, Mr. McGee visited Ms. Carriere and wrote a third contract, which this time was for what I felt unnecessary merchandise at the cemetery. She was sold a family estate site with one bench, three statues, three decals, it looked like on the contract. If I were to have to fulfill this contract at the time of her death as the funeral home, I would not understand what this was all about. The cost of this contract was \$45,300, and it was difficult to read.

On March 22, Mr. McGee came back out and rewrote, I believe, the previous contract due to some mistakes that they had caught at this time and must have credited back the moneys. This contract was for \$39,785.50. Now, at this point, mind you, Ms. Carriere had already purchased some sort of space for her burial, as I mentioned before, and all the necessary merchandise that she had needed.

On March 24, Mr. McGee again visited Ms. Carriere and sold her this time on a contract a mausoleum and a bronze marker, all to the tune of \$52,738.42, keeping in mind, please, that a mausoleum is for the purpose of above-ground burial and she had already selected ground space on a previous contract, with a vault, and this

is where the bronze marker was to be used, which was the conflicting interest.

If you ask me was this woman taken advantage of, my answer would be absolutely. In all my years, I have never seen a family make such different selections, much less understand this type of selection. And this happens on a frequent basis in the area by SCI-owned firms that I have witnessed. It just is not done on the magnitude of this case.

It is my understanding in the beginning that SCI wanted to return all of the money to Ms. Carriere, but her attorney had insisted that they try and go to trial with this. It is also my understanding that this was settled out of court. The words "isolated incident" seem to be new verbiage that has come into our industry from the corporations. Isolated, this is not.

The practices of Mr. Alex McGee also led to the fact that he and his wife and family befriended Ms. Carriere, as she was alone after her niece went back, and took her to Cypress Gardens for a day. After the contracts were signed, Ms. Carriere no longer saw Mr. Alex McGee. It saddens me to think that our aging family members fall into such practices by under-educated salespeople all over the country.

Thank you for your time.

The CHAIRMAN. Before Mr. Roberts speaks, maybe an unrelated question, but how did the salesman know of the means of this family to afford the sorts of contracts he sold them?

Ms. LANKFORD. I don't know. That was never divulged to me. Whenever they went out and started writing, evidently she must have made some type of comment. That never came up as far as my instructions. Ms. Fuller does have a copy of the contracts. She also has a copy of my deposition affidavit of the case.

The CHAIRMAN. Thank you, Ms. Lankford.

[The prepared statement of Ms. Lankford follows.]

**TESTIMONY OF
CHERYL L. LANKFORD**

**Before the
SPECIAL COMMITTEE ON AGING**

April 10, 2000

Good Morning:

My name is Cheryl L. Lankford of DeLand, FL. I have been a licensed funeral director and embalmer for the past 19 years and I work in our family owned and operated firm, Lankford Funeral Home.

In June of 1997, I attended an Independent Funeral Directors convention and was introduced to Mr. Scott Langston. He asked if I would be willing to view several documents regarding the Lyndall Carriere case and he then explained the basis of the case to me. In reviewing the documents I found several mistakes in the format of how the sales person wrote the pre-need contract for Mrs. Carriere. Each state lines out the regulations that would pertain to how to write a pre-need contract and what can and can't be excepted on the said contract. This serves as protection for the purchaser as well as for the protection and instructions for the funeral home when the purchaser dies.

Mr. Langston revealed to me that the said counselor met with Mrs. Carriere approximately five times to secure the pre-need sale and each time a new contract was written, more merchandise was added and in my opinion was not the standard practice of a consumer to purchase. She and her niece had first contacted the cemetery to begin setting up for the arrangements of her husband by selecting the burial site for the cremated remains. This is by no means a lavish purchase for most consumers especially in the age group of Mrs. Carriere. What I mean by this is with her state of mind and not being educated she entrusted herself to be instructed by this salesman to see that her needs were met for the said burial. I later learned that the salesman befriended her and he and his family took her to Busch Gardens for the day and after the last of the contracts were written his visits ceased.

This is not unusual practice for the sales force of S. C. 1. as they are taught to not leave the home of the consumer without a check and if the contract is not right it can be "fixed" later at the office. In speaking with Mr. Langston I told of similar stories from my area as we have three S. C. 1. firms and two of their cemeteries in our 7 mile radius. I received a call on one lady that she reported the salesman came over, hung pictures, and did her laundry only to leave without a contract this time. This is just one of many stories. I am enclosing a video of some of the other practices that they continue to do today even with all that has occurred to them. The sales person gets paid on a commission basis based on the amount of the contract, thus the need to "bump up" the sale of merchandise.

Mrs. Carriere was taken advantage of in this case with regards to her state of mind and unfortunately enough to say through her loneliness which we see more and more with the elderly who have no family members around to protect them.

I belong to a group funeral directors that own and operated their firms which today is becoming more and more unheard of As funeral directors grow older their family members are either not interested or they have no one to pass the business on to , thus the sale to a corporation that promises much but delivers little.

I believe as my father did, that families and their needs come first, customer service, and consumer awareness are last but both are a necessary and vital part if our business is to flourish.

Being independent allows me to set the standards in which the treatment of our families will be given as well as the cost of services. Independent owners do not have to answer to stock holders they answer to the community, their dollars go to the area and not to a corporate headquarters to pay executive salaries.

There is little pressure with the staff in meeting the needs and the selection of merchandise to the consumer. Ours is one of family serving family where they are not a number but a name.

I was contacted a few years ago by the Federal Trade Commission as S.C.I. was in the process of purchasing two cemeteries in our area., one of which they were to later place a funeral home on. I don't know if this was disclosed to the Commission at the time of the interview with respect of them placing new funeral home on the property or not. But I explained to the Commission that they were wasting my time and theirs with this interview as the minds were already made up and the sale would go through. The Commission was trying to establish if harm would come to the local family owned firms by this sale and my answer was absolutely! for ever answer I had the Commission had a better one and a better reason through their questioning. Such as "if the coporates did purchase this would you be able to compete cost wise?" My answer was no. In my experience, the corporate firms come into a region, lower their costs to secure the business, while letting the revenues of their high dollar firms in other areas compensate and try to run the Independent firms out through this method. I am one of the fortunate ones as I worked for S.C.I. and knew of this practice as well as having worked for the Loewen group for 6 years. I was asked if I felt this would be a monopoly in our area with the ownership and my answer was yes! The come back was at the time was they only owned two firms and two cemeteries and how can this become a monopoly? But if you look at each region as a whole instead of the entire industry throughout the United States which is where they based their figures then the picture changes.

We as Independents face many obstacles when competing against a corporately owned firm. The main one being the amount of dollars we have available to spend for advertising, sales forces, and boiler rooms that soliciate the consumer. We as Independents operate by a code of ethics and not solely on the dollar. Corporates have the ability to come in and blanket the community thus attempting to distroy the reputation of area firms. Corporate firms operate under the code of ethics known to them as deception to the consumer They use teaser ads where cost is concerned to lure the consumer into their firms only to find that the consumer becomes the victim as the cost advertised changes once the consumer enters.

To the corporates, the "uneducated consumer" is the best consumer. Thus the unfair treatment of our elderly who think they are helping their loved ones out by securing the costs of their final services in advance.

To improve consumer awareness where they are protected when purchasing pre-need is quite an "undertaking," no pun intended! In order to do this it will need to start on not only a state by state level but by possibly setting up a Special Committee to study and implement the improvements where needed. It is so easy to become a counselor to sell pre-need in the state of Florida that this is the scary part. If you give me your name, address, phone, social security number, date of birth and a check for \$150.00, I can overnight it to Tallahassee, Florida and the next day you can begin writing pre-need. I remember the day when only a licensed funeral director could sign a pre-need contract. This I believe is where it all changes and got so out of hand. Training in this industry is a must and as you can see by the above mention on licensure it doesn't take a rocket scientist to write pre-need.

S. C. I. has stated that they do train their pre-need sales persons but from first hand knowledge this is not the case. Very little training is involved for something that I feel is such an important decision to make by the consumer.

The CHAIRMAN. Now, Mr. Roberts.

STATEMENT OF DARYL J. ROBERTS, SCOTTSDALE, AZ

Mr. ROBERTS. Thank you, Senator Grassley, Senator Breaux. Thank you for the opportunity to address your committee. I have been involved with the death care industry for the majority of my life and take a great deal of interest in the current hearings and other events which impact seniors and other consumers of death care goods and services.

Unfortunately, members of the industry have seen fit to misinform almost everyone about the facts, choosing instead a path of deception to maximize their profitability at the expense of consumers. I was in the death care industry my whole life, until 1994, and once I got out I wrote a book entitled *Profits of Death*, which won the 1997 National Association of Independent Publishers award for best content. Since that time, I have been involved with several undercover studies like the one we just saw. I have also been on "60 Minutes" and participated in over 200 radio programs.

For the most part, death care providers do not directly lie to consumers. Instead, they excel in the art of deception and misinformation. The majority of these deceptions center around not disclosing pertinent facts to consumers that might have a direct impact on the dollar amount of the sale. They play on the consumers' emotions of guilt, fear, and love to maximize the dollar amount of sale.

They are able to accomplish this because the death care purchase is one made on the most emotional day of a person's life, and they can count on the person having little or no knowledge about the products and services they are buying. Emotion and lack of knowledge are the reasons that the industry is able to fool the public, while at the same time being held in high esteem by the very same public they are deceiving. There are few complaints about the industry because consumers are either not aware they have been deceived or are too embarrassed after the fact to complain.

I am going to quickly review some of the problems that I see with the industry.

Embalming. The benefit of embalming is frequently misrepresented. The industry leaves the impression with the consumer that embalming has some sort of long-term preservative effect on the remains.

Sealer caskets. Consumers are frequently led to believe that there are special preservative benefits to purchasing a casket with a seal. Using words like "protecting" and "memorializing," they leave the buyers feeling guilty if they are not willing to protect their loved one.

Sealed vaults. Similarly, the public is led to believe that the purchase of a sealed vault will in some manner preserve the casket and remains of the deceased.

Legal requirements. Death care providers also tend to leave the impression that there are certain legal requirements that must be met. For instance, it is common to lead the consumer to believe that bodies must be embalmed before cremation.

Cremation. Cremation is a threat to the income stream of most funeral facilities. The industry is attempting to maximize their sales by again using guilt and fear to lead consumers down the

most expensive path possible. They will attempt to get the family to embalm the body, buy a casket, and have a viewing so that the family, "will not make a mistake that they will later regret" or so that the grandkids will have a chance to say goodbye.

The non-declinable service fee. This fee is the worst mistake the Federal Trade Commission made in their Funeral Rule. It has allowed the industry to charge consumers a fee for services whether the services are used or not.

Product availability. Since the industry is required to give the consumer a price list before viewing caskets, it is not uncommon for the list to include items that are not currently on the showroom floor. This is often a ploy to eliminate the sale of less expensive products. The consumer is rarely, if ever, told that other products are available within 24 hours.

Wood caskets. Wooden caskets are possibly the most beautiful of all offered by the industry. What the industry does not tell the consumer is that wooden caskets will deteriorate very quickly either in a mausoleum or in the ground.

Advertising. Laws in many States prohibit certain types of advertising. Most of these prevent the industry from advertising prices and special promotions.

Limiting who sells funeral products. The industry has passed laws in 12 States that make it illegal for anyone other than funeral personnel to sell funeral merchandise.

Ownership. The conglomerates now own approximately 20 percent of all funeral establishments in the United States. Instead of using name recognition, as is the common practice among most other industries, they do everything they can to prevent the consumer from knowing the real owner. This deceptive practice openly misleads consumers into using what are usually the highest priced facilities in the area.

Pre-need portability. Currently, there is no portability in the industry for pre-need purchases. There should be.

Pre-need inflation. Consumers believe when making pre-arrangements that once they have paid their money, their funeral is locked in at the agreed price. Reality is that the majority of facilities do not guarantee that the price paid will pay for the funeral at death.

Pre-need trusts. Many State laws have placed restrictions on trusting for pre-need sales. Most of these are not for the benefit of the consumers, but are rather for the benefit of the industry itself.

Pre-need insurance. One of the biggest consumer shams is the use of insurance to fund pre-need funerals. The vast majority of these policies are overpriced compared to similar policies sold for a purpose other than to cover funeral costs. With few exceptions, the policies currently marketed offer no inflation protection.

Since I see the red light is on, I will go to a couple of solutions.

The CHAIRMAN. Please proceed. I have been very liberal because I think that this is much more shocking than I anticipated and I want to make sure that you have plenty of opportunity.

Mr. ROBERTS. Thank you, sir.

Most of what I have been talking about so far has centered around the funeral industry itself and I want to shift over to the cemetery industry for just a few comments.

Vaults. Almost all cemeteries require vaults for the sole purpose of grounds maintenance. They rarely tell that to the consumer so they can maximize their sale by selling a sealer vault.

Memorials. Most cemeteries that sell memorials place restrictions on the installation of memorials purchased elsewhere, which means, of course, that the consumer has no choice and this drives up the price to the consumer.

Once again, portability in the cemetery industry. Much like the funeral industry, cemeteries have no consumer-friendly plan to deal with consumers who relocate.

Sales tactics. Direct marketers of cemetery products often use a series of gimmicks to sell the consumer. Often, consumers are required to purchase on the very first sales call or lose certain price benefits. In truth, there really are no price benefits. Consumers are offered a variety of free items based on some affiliation, usually veterans or civic organizations. These same benefits are usually available to anyone and not just that organization. Free space programs usually come with some form of deferred cost.

Not-for-profit cemeteries and funeral homes. Some churches and individuals have organized cemeteries and funeral homes as not-for-profit organizations to mislead consumers or comply with outdated State laws. The reality is that many of these locations are contracted to for-profit companies to manage and market the products without the consumer knowing. This is also a way for church groups to maintain their not-for-profit status while enjoying the benefits of a for-profit company.

Open and closing of graves. Unfortunately, many cemetery operators have learned a great lesson from the funeral industry about some neat tricks. Some States are now passing legislation prohibiting anyone other than the cemetery from digging graves. Those States that have passed this type of legislation have seen a tripling of opening and closing prices in just a few years.

Now that I have identified several problems, let me propose several solutions. The industry needs to disclose to consumers exactly what embalming does, and needs to disclaim that there is any long-term preservative effect. The industry needs to put a disclaimer on sealer caskets which tells the consumer that the casket will not prevent the natural decomposition of human remains. The industry needs to put a disclaimer on all vaults saying basically the same thing.

The industry should be required to inflation-protect all pre-need sales. We need to require that the industry have complete portability with all pre-need purchases. The industry needs to put a disclaimer on all sales of wood caskets, informing the consumer of the strengths and weaknesses of wood caskets.

Your committee needs to find a way to allow more competition in casket sales. The laws that allow only funeral directors to sell funeral goods and services need to be overturned or legislation passed that would make such anti-competitive laws illegal.

Legislation needs to be passed eliminating the non-declinable service fee. Funeral homes should be required to have a representative line of caskets. All cremation customers should have notification stating the facts about what is required for cremation, and facilities owned by corporations should be required to disclose owner-

ship in all advertising. All restrictions on advertising should be repealed.

Legislation should be passed eliminating all cemetery restrictions on the sale of memorials and opening and closing of graves. State funeral boards should consist of a majority of consumers and a minority of industry members. Federal legislation should be passed to repeal all self-protecting and anti-competitive State laws.

It will be a very difficult job to accomplish any of the things I have discussed in this letter. The death care industry has deep pockets and continues to raise money to protect itself and to maintain the status quo. Industry publications are already touting their meetings with this committee as a hedge against negative consequences.

Every member of this committee can expect to be lobbied heavily by industry constituents. At the same time, do not expect a knock on your door from consumers. Consumers are not organized and are not likely to lobby the committee. So other than the few of us who are pleased to assist the committee, there will be no outcry. Your challenge will be to sort out the facts and from those facts make logical decisions about what is right for all consumers, not just the industry lobbyists.

Thank you very much.

The CHAIRMAN. Mr. Roberts, we can tell you have given it a great deal of thought. Thank you for your contribution.

[The prepared statement of Mr. Roberts follows.]

TESTIMONY OF
DARRYL J. ROBERTS
Before the
SPECIAL COMMITTEE ON AGING
APRIL 10, 2000

The Honorable Senator Charles Grassley, Chairman of the U.S. Senate Special Committee on Aging
Chairman Grassley, Senator Breaux, Members of the Committee

Thank you for the opportunity to address your committee. I have been involved with the death care industry for the majority of my life and take a great deal of interest in the current hearings and other events which impact seniors and other consumers of death care goods and services.

Unfortunately, members of the industry have seen fit to misinform almost everyone about the facts, choosing instead a path of deception to maximize their profitability at the expense of the consumers. How do I know? Because I was directly involved with many of these same deceptions during my thirty-five year career in the industry. I make this admission so that the members of your committee understand that the only way to be believed is to confess past mistakes. I am sorry for these mistakes and I am now trying to correct them by helping consumers to understand the pitfalls that await them when dealing with members of the industry.

First, a few quick facts about my background. My father began selling cemetery lots in 1948, and I was therefore literally raised in the industry. At the age of fourteen, I worked in a cemetery doing maintenance jobs, mowing grass, trimming memorials, digging graves, etc.. At eighteen, I was already learning how to sell cemetery goods and services. After graduating from the University of Tennessee, I was managed a cemetery and funeral home in Richlands Virginia. Three years later, I became the business manager of our family company which eventually owned and operated, at one time, twenty-one cemeteries and four funeral homes. After my father's death in 1980, I became the CEO of our company until our sale to one of the conglomerates in 1994. I wrote my book Profits of Death that was published in 1997, and won the 1997 National Association of Independent Publishers award for the best content for a soft cover title. Since the book was published I have been fortunate to participate in about forty television shows (including 60 Minutes) and over two hundred radio programs, all directly concerning the death care industry. I have also been a frequent contributor to many national publications doing articles about the industry. For the most part, death care providers do not directly lie to consumers. Instead, they excel in the art of deception and misinformation. The majority of these deceptions center around not disclosing pertinent facts to consumers that might have a direct impact on the dollar amount of sales to consumers. They play on the consumer's emotions of guilt, fear, and love to maximize the dollar amount of the sale. They are able to accomplish this because the death care purchase is one made on the most emotional day of a person's life, a person they can count on to have little or no knowledge about the products and services. Emotion and lack of knowledge are the reasons that the industry is able to fool the public while at the same time being held in high esteem by the very same public they are deceiving. There are few complaints about the industry because consumers are either not aware they have been deceived or are to embarrassed after the fact to complain.

Let me review several examples of deceptions and other problems:

Embalming: The benefit of embalming is frequently misrepresented. The industry leaves the impression with the consumer that embalming has some sort of long term preservative effect on the

remains (absolutely not true). In fact, embalming preserves the remains for a very short period of time so that the body can be viewed by family and friends.

Sealer Caskets: Consumers are frequently led to believe that there are special preservative benefits to purchasing a casket with a seal. Using words like "protecting" and "memorializing" they leave the buyers feeling guilty if they are not willing to "protect" their loved one. In truth, sealer caskets have a detrimental effect on natural deterioration and may in fact speed up the process.

Sealed Vaults: Similarly, the public is led to believe that the purchase of a sealed vault will in some manner preserve the casket and remains of the deceased. Sealed vaults do absolutely nothing to preserve either of these. Human remains will still decompose and the caskets will still deteriorate whether the vault is sealed or not.

Legal requirements: Death care providers also tend to leave the impression that there are certain legal requirements that must be met. For instance, it is common to lead the consumer to believe that bodies must be embalmed before cremation or that a body must be placed in a container before cremation. Often it is suggested that all bodies must be embalmed regardless of disposition.

Cremation: Cremation is a threat to the income stream of most funeral facilities. In 1999, about twenty-five percent of all death cases were cremated. The industry is attempting to maximize their sales by again using guilt and fear to lead the consumers down the most expensive path possible. They will attempt to get the family to embalm the body, buy a casket, and have a viewing so that the family "will not make a mistake that they will later regret" or so the kids and grandkids will "have a chance to say goodbye."

Non-declinable service fee: This fee is the worst mistake the FTC made in their "funeral rule." It has allowed the industry to charge consumers a fee for services whether the services are used or not. It is defended by the industry as a cost of keeping the facility staffed and controlling the cost of operations. I know of no other industry that charges its consumers for their overhead in a separate non-declinable fee.

Product availability: Since the industry is required to give the consumer a price list before viewing caskets, it is not uncommon for the list to include items that are not currently on the showroom floor. This is often a ploy to eliminate the sale of less expensive products. The consumer is rarely, if ever, told that all of the products, and even other products, are available within twenty-four hours.

Wood caskets: Wood caskets are possibly the most beautiful of all offered by the industry. What the industry does not tell the consumer is that wood caskets will deteriorate very quickly in the ground. If they do tell the consumer, they will then attempt to sell a better "sealer" vault to protect the casket and remains from deterioration. Sealer vault or not, wood will rot quickly once in the ground and will crack apart when put in a mausoleum.

Advertising: Laws in many states prohibit certain types of advertising. Most of these prevent the industry from advertising prices and special promotions. This lack of open competitiveness prevents consumers from knowing the options that exist without actually visiting facilities.

Limiting who sells funeral products: The industry has passed laws in twelve states that make it illegal for anyone other than funeral personnel to sell funeral merchandise. These types of restrictions mean consumers will pay more for items than in areas where free enterprise is allowed to flourish. The industry is very proud of its anti-competitive legislative effort

Ownership: The conglomerates now own approximately twenty percent of all funeral establishments in the United States. Instead of using name recognition, as is the common practice among most other industries, they appear to do everything they can to prevent the consumer from knowing the real owner. They apparently believe that it is important that the consumer believe they are dealing with the same family name that may have existed for years. This deceptive practice openly misleads consumers into using what are usually the highest priced facilities in the area.

Pre-need portability: Currently, there is no portability in the industry for pre-need purchases. Consumers should not be forced to use a facility just because they were smart enough to make advanced arrangements. The industry has never seriously addressed this important consumer issue because they want to insure that the consumers are locked into their establishment. Most consumers are either not told that they have no portability or they are told that they can get their money back if they move. Neither of these is what the consumer wants. Even if the consumer uses insurance as the financing vehicle, the recipient facility will generally find a way to charge more than the original facility.

Pre-need inflation: Consumers believe when making pre-arrangements that once they have paid their money their funeral is locked in at the agreed price. Reality is that the majority of facilities do not guarantee that the price paid will pay for the funeral at death. Often they will come back to the family and ask for more money because inflation has raised the cost and the family must pay the difference.

Pre-need trusts: Many state laws have placed restrictions on trusting for pre-need sales. Most of these have been enacted to restrict competition. The restrictions usually refer to the amount that must be trusted and to how much the consumer gets as a refund if he decides to cancel or move. The laws usually allow the selling facility to claim any excess funding as income. The laws as currently written give all the advantages to the seller and none to the consumer. A properly funded trust would allow consumers the inflation protection they deserve.

Pre-need insurance: One of the biggest consumer shams is the use of insurance to fund pre-need purchases. The vast majority of these policies are overpriced as compared to a similar policy sold for a purpose other than to cover funeral costs. With few exceptions, the policies currently marketed offer no inflation protection. The result? The industry receives a commission of twenty to forty

percent for selling an overpriced policy and, when a death occurs charges additional fees to the family because the death proceeds are not enough to cover the price increase of the funeral.

So far, all of the things that I have discussed have dealt directly with funeral establishments. Now I would like to discuss a few of the problems with cemeteries:

Vaults: Almost all cemeteries require vaults for the sole purpose of grounds maintenance. The rationale is that all caskets will deteriorate, leaving a depression that will require additional maintenance to repair. Unfortunately, most will not tell the consumer that all that is needed is a concrete shell. Most will not even offer this as an alternative thus not giving the consumer a less expensive alternative.

Memorials: Most cemeteries that sell memorials place restrictions on the installation of memorials purchased elsewhere. This limits the consumer's choice and drives up the price. These restrictions are usually in the rules and regulations of the cemetery and unseen by the consumer until the need arises

Portability: Much like the funeral industry, cemeteries have no consumer-friendly plan to deal with consumers who relocate. Most of the time, the consumer does not receive anything. A plan sponsored by the International Cemetery and Funeral Association allows the consumer to relocate to a participating cemetery by paying the difference in the price. This plan is often misunderstood by the consumer and misrepresented by the cemetery.

Sales tactics: Direct marketers of cemetery products often use a series of gimmicks to sell the consumer. Often consumers are required to purchase on the very first sales call or lose certain price benefits. (In truth, there really are no price benefits.) Consumers are offered a variety of free items based on some affiliation, usually veterans or civic organizations. (These same benefits are usually available to anyone and not just the organization.) Free space programs usually come with some form of deferred costs. Many of these sales tactics could be described as consumer fraud but are routinely used by the industry.

Not for profit: Some churches and individuals have organized cemeteries as not-for-profit organizations to mislead consumers or comply with outdated state laws. The salespeople will sell the attributes of working with a not-for-profit entity and how that saves them money. The reality is that many of these locations are then contracted to for-profit companies to manage and market the products without the consumer knowing. This is also a way for church groups to maintain their not for profit status while enjoying the benefits of a for-profit company.

Opening and closing graves: Unfortunately, cemetery operators have learned from their funeral director friends some very neat tricks. Some states are now passing legislation prohibiting anyone other than the cemetery from digging graves. Those states that have passed this type of legislation have seen a tripling of opening and closing prices in just a few years, proving once again that when competition is limited prices will increase.

Now that I have identified several different problems, it is time to propose some fixes. Some of these would be relatively easy to implement and others would be very difficult. The recurrent theme will be what is best for the consumer.

1. The industry needs to disclose to consumers exactly what embalming does and needs to disclaim that there is any long-term preservative effect.
2. The industry needs to put a disclaimer on sealer caskets which tells the consumer that the casket will not prevent the natural decomposition of human remains and may in fact accelerate that decomposition.
3. The industry needs to put a disclaimer on all vaults - and especially sealer vaults - that they will not prevent the natural decomposition of human remains and may in fact accelerate that decomposition. They should also state that a purpose of a vault is solely to keep the ground from caving when the casket deteriorates.
4. The industry should be required to inflation protect all pre-need sales. Consumers should never have to pay more money for something already paid for in full. This is easy with trust funds and would require insurance policies to have an inflation factor.
5. Require complete portability with all pre-need purchases. Consumers should not be penalized because they move.
6. The industry needs to put a disclaimer on all sales of wood caskets informing the consumer of the strengths and weaknesses of wood caskets.
7. Your committee needs to find a way to allow more competition in casket sales. The laws that allow only funeral directors to sell funeral goods and services need to be overturned or legislation passed that would make such anti-competitive laws illegal.
8. Legislation needs to be passed eliminating the non-declinable service fee. All services should be itemized and the consumer should have the right to pick which ones are right for their situation.
9. Funeral homes should be required to have a representative line of caskets. All price ranges should be available and consumers need to be made aware that any casket is available within 24 hours.
10. All cremation customers should receive a notification stating the facts about what is required for cremation. This should specifically state that neither embalming nor an outside container is required for cremation.

11. Facilities owned by corporations should be required to disclose ownership in all advertising and printed material.
12. All restrictions on advertising should be repealed.
13. Legislation should be passed eliminating all cemetery restrictions on the sales of memorials and opening and closing of graves.
14. State funeral boards should consist of a majority of consumers and a minority of industry members
15. Federal legislation should be passed to repeal all self-protecting and anti-competitive state laws.

It will be a very difficult job to accomplish any of the things I have discussed in this letter. The death care industry has deep pockets and continues to raise money to protect itself and to maintain the status quo. Industry publications are already touting their meetings with you as a hedge against negative consequences. Every member of this committee can be expected to be lobbied heavily by industry constituents. At the same time, do not expect a knock on your door from consumers. Consumers are not organized and are not likely to lobby the committee. So, other than the few of us who are pleased to assist the committee, there will be no outcry. Your challenge will be to sort out the facts and from those facts make logical decisions about what is right for all consumers, not just the industry lobbyists.

The CHAIRMAN. Father Wasielewski.

STATEMENT OF FATHER HENRY WASIELEWSKI, INTERFAITH FUNERAL INFORMATION COMMITTEE, TEMPE, AZ

Father WASIELEWSKI. I would ask if the Senators have these available to them because I am going to go——

Senator BREAU. What is that, Father?

Father WASIELEWSKI. Pardon me?

Senator BREAU. Describe what that is.

Father WASIELEWSKI. This is a Houston price survey, and then this is an ad placed in the National Catholic Reporter with a headline at the top, and this is a booklet.

Senator BREAU. Go ahead and begin.

The CHAIRMAN. We will share Senator Breaux'.

Father WASIELEWSKI. I have got some extra copies here.

The CHAIRMAN. For now, we are OK, but we will take your extra copies later on.

Father WASIELEWSKI. I am Father Henry Wasielewski, a priest of the Catholic Diocese of Phoenix. I studied engineering, TV production and journalism in college and taught in two high schools. I was always interested in social justice and always asked for assignments in low-income parishes. I also started the farm worker and prison ministries for the diocese.

My funeral abuse activities began in about 1980, and I have appeared in long segments of TV programs such as "Today," "Date-line," and in investigative reports in England, New Zealand, and long investigation reports in many cities throughout the country—Denver, Hartford, Tampa, Minneapolis, whatever. My activities and advice have been covered in national periodicals such as U.S. News and World Report, National Catholic Reporter, Kiplinger's, Money magazine, and in this month's issue of Modern Maturity and this month's issue of Episcopalian Life magazine.

I have been helping with an extensive report right at the moment on cemetery abuse in the next issue of Consumers Digest, and on clergy mortuary bribery in the next issue of Sojourners social justice magazine. I assisted with a long report on clergy mortuary bribery in the Arizona Republic, and I will speak about that later.

I became concerned with funeral abuse as I dealt with families and morticians in parishes in which I served. I will skip over the stories in my text about families which were abused to have time to explain deceptive practices.

One or two of the two or three decent morticians I have met—and it really bothers me when I hear anybody say that most of the industry is good or there are a couple of bad apples. The fact is, in my experience with the morticians in my area, they are all bad apples. There are only a couple of good ones in the barrel, and today I will say that nearly every mortician in the United States is defrauding nearly every family that comes to him, nearly every mortician in the United States. I would say a handful are not.

This is a really rough industry and they are rough on critics. A mortician gave me a casket catalogue with a secret wholesale price list, and this is a secret which was mentioned in the FTC report in 1978 that the industry kept the wholesale prices of caskets top

secret, and they put it in capital letters. These prices have been secret for a century, but I was able to obtain them.

This mortician said he was ashamed of the industry's prices and tactics, and after I published the prices, he received a phone call saying since you won't keep your mouth shut, we have to teach you a lesson. Within a day or two, his mortuary was burned down. Firemen said it was arson.

A casket distributor who provided caskets to him was warned by one of the largest casket companies—that happens to be Batesville; I am going to start naming names because these guys get off too easy—that his casket supply would be cutoff if he continued delivering to the mortician. Sugar was put in the gas tanks of his trucks to destroy the engines. After I published the survey of prices of all the area's mortuaries, all of the tires on my car were slashed and I received a death threat.

In 1982, a group of us clergy and lay people formed the Interfaith Funeral Information Committee. We set up an information hotline which has now received more than 40,000 phone calls, and I think this is why my testimony is somewhat different than others, in that I have tried to answer all these phone calls myself, or as many as possible.

We began publishing surveys of mortuary prices every few years. Immediately, I was attacked by the Catholic bishop of my diocese with an article attacking our committee and our survey, as if doing a survey is wrong. I mean, there are surveys of cars and everything else. And this was written by the morticians and the bishop published this at their urging under his name.

Later, I was punished for 6 years by the bishop for my survey activities, and as part of his effort to punish me he stole from the diocese more than \$120,000 because he paid me for doing no work. He would not allow me to work and paid me. Any of you that had a supervisor and the supervisor told you to do nothing for the next 6 years and would pay you, you would fire them, wouldn't you, the guys on your staff? Maybe you do have some people that don't work.

The CHAIRMAN. No, we do not.

Father WASIELEWSKI. Anyhow, it kind of indicates how strong this industry is and how they get through to the clergy and the bishops.

I published the first price list of secret wholesale prices in 1983, and now I would like you to take a look at the Houston price survey because this really shows what is going on in one community and you don't get this just by these scattered stories.

If you take a look at column No. 2, you will see caskets wholesaling for less than \$300. If you look at the very top of the column, it says casket choice of three colors. This means that we are hoping there is a color in there besides ugly gray and ugly brown, sort of like pink or blue or whatever, and we state that in here.

The first mortuary down there charges—let's see, there is one down there, but the third underneath the text, \$485. Now, if you go down the list, just take a look at what happens to that casket—\$1,400, \$1,800, \$2,400, \$3,000, \$3,800, all the way down to \$5,895 for the lowest-priced casket in the building, in Houston, TX. And

that would be for just a casket that comes in pink or blue or something like that.

In the folder which we are going to look at in a few moments, we show you can get a blue casket wholesaling at \$297. But these guys use this as a technique if families come in and they said they would like blue, he says, "Well, that starts at \$5,895." So, that is the least that a family get out unless they want something ugly.

You can read the other prices if you wish. Well, just one more. Take a look at column 4. Column 4 is the total price for a funeral and services. Some mortuaries try to say that, "Well, we sell our caskets at a higher price and then the services are lower," or vice versa. That is not the case.

If you go down taking a look at columns 2 and 3, you will see that both the services and the casket prices go up and up and up together. Then column 4, at the top several mortuaries at \$1,495 for a complete funeral. This is pick up the body, embalm, do all the paperwork, take the body to a service, either a church or the mortuary; next morning to the church and then off to the grave, and including a casket and the lowest priced casket they can find in pink or blue or white or something like that, \$1,495, and so on. And then you go down the list and it goes to \$2,000, \$3,000, \$4,000, \$6,000, \$8,000, finally \$9,910 for exactly the same funeral.

Now, this is why people do need to shop around, but one of the problems is—and you need to add a point number—Senator Grassley, you need to add a point zero there on your list. The first thing people need to know is how much should the thing cost. If they are in a city where SCI has taken over everything or the chains have taken over, the prices for funerals—and let me say this: I just had a call from the editor of the Korean national newspaper last week and he said that his Korean people are paying from \$12,000 to \$15,000 for funerals. And I said that is crazy, so I sent him this booklet and we are going to help him to educate his people through his newspaper.

If you go to the next page, this is an industry whose normal mode of operation is secrecy, fraud, ripping off the public, and I am talking about all 100 percent of the mortuaries. And I am talking about here, as I mentioned, the National Funeral Directors Association which seems to have the only purpose of trying to misinform the media.

Just last week or 2 weeks ago, their spokesman told *Episcopalian Life* magazine that the average person-hours for a funeral is 60. That is baloney. That is three times too much. I have here a time list of each of the activities in a funeral done by a mortician in the Phoenix area who is a legislator and well respected and all that. And it comes out to 18.5 hours, 18.5, but the National Funeral Directors Association—and the media don't go and demand, let's see a breakdown of that. So then the media tells all the people.

I was on the program, CNBC's "Steals and Deals." On the program with me, a mortician from New York stated that he wanted to explain to people why prices were so high. He says, you know, the other day I sat down and tried to figure it out and I found out that I spend between 104 and 150 hours with the family on the average funeral. And so that went out across the country, and so people would say, "Well, it is no wonder prices are so high." This guy

has got to go live with them, I guess, or bring the whole family to live with him. I mean, that is 4 weeks of man-hours, and these guys get away with that.

Then I mention here our Web site and our materials describe more than 100 deceptive sales practices. In fact; when I counted them today, it was 123. None of these are forbidden by the Federal Trade Commission regulations—123 deceptive practices, and I have got them all here. I will be happy to meet with you guys tomorrow or some other time.

The CHAIRMAN. Father, how much more time do you need?

Father WASIELEWSKI. Just a little bit.

The CHAIRMAN. OK.

Father WASIELEWSKI. There are two reasons for the industry's rip-off. No. 1 is that there are 5 to 10 times too many mortuaries, and this is stated by the industry's own experts, some of them with only a couple of funerals a month; second, a desire for high profit.

We produced this booklet in hopes of trying to produce something that would prevent people from being ripped off, and the No. 1 thing here as my suggestion to you is that we show here what the wholesale price of each of these caskets are and how much mortuaries are charging and how much in our demonstration program is charged. On the back side are the prices for the funerals—\$900, total, for a funeral, not \$4,000, and that is how much a complete funeral can be done for. So these prices are just—I mean, they are bad.

And I would suggest, too, that a solution to this whole funeral problem would be to try to get a booklet like this into the hands of everybody in the United States. Right now, Consumers Digest is going to encourage everybody who reads their magazine to send for one of these. Episcopalian Life magazine decided that and we are getting hundreds of requests.

I guess the other thing I would like to mention is the fraud of the sealer caskets. These things destroy—

The CHAIRMAN. I would ask that this be your last point, then. You have done very well to help us.

Father WASIELEWSKI. Well, the last point, I need to jump over on that one; that is, one of the worst things in the funeral industry right now is the cooperation of the clergy. Cardinals and bishops and priests are receiving pay-offs. A priest down the street from me get a free car every year. The bishop gets a free car, and the cardinal in California. And I have a contract here between SCI to provide to pastors to sign up for a kick-back. So somehow we have got to stop all that.

Thank you.

The CHAIRMAN. Well done, Father Wasielewski.

[The prepared statement of Father Wasielewski follows:]

TESTIMONY OF
FATHER HENRY WASIELEWSKI
before the
SPECIAL COMMITTEE ON AGING
APRIL 10, 2000

I am Father Henry Wasielewski, a priest of the Catholic Diocese of Phoenix. I studied engineering, TV production, and journalism in college, and taught in two high schools. I was always interested in social justice, and always asked for assignments in low-income parishes. I started both the farm worker and prison ministries for the diocese. I worked as a full-time prison chaplain for six years. I currently conduct religious services and classes in two parishes.

My funeral abuse activities began in about 1980. They have been featured in long segments of such TV programs as TODAY, DATELINE, CLOSER LOOK, HOME and others. I have appeared in extensive TV investigative reports in England and New Zealand networks, in week-long investigative series in Hartford, Denver, Houston and Phoenix; and on evening news reports in Cincinnati, Minneapolis, Detroit, Tampa and many other U.S. cities. This long list gives an idea of the concern about the abuse by this industry throughout the nation.

My activities have been covered in long segments of national periodicals as U.S. NEWS & WORLD REPORT, NATIONAL CATHOLIC REPORTER, PARENT CARE ADVISOR, and in this month's issues of MODERN MATURITY and EPISCOPALIAN LIFE magazines. I have been helping with an extensive report on cemetery abuse in the next issue of CONSUMES DIGEST, and on clergy/mortuary bribery in the next issue of SOJOURNERS social justice magazine.

I became concerned about funeral abuse as I dealt with families and morticians in the parishes in which I served.

One of the first situations was when I received a phone call from neighbors about a woman with epilepsy begging money door-to-door to bury her husband. When I visited her, she said that she had picked the lowest-priced casket. I called the mortician to ask why the price was so high; he said she had picked a high-priced casket. However, at the evening visitation I found that he had lied to me, and that she had picked a cheap plywood box.

I called the mortician the next morning and told him that I would call the attorney general's office if he didn't drop the price. He immediately said: "Ok, I'll cut it the price in half, how's that?" Then he said, "Now this won't get into the newspapers will it?" His only interest seemed to be to make sure that the public didn't find out about it so that he could rip off all the rest of the area's families.

I visited another family after a funeral. They told me that they were already making monthly payments on three past funerals. They told me that they had not gotten expensive funerals, but that this funeral would add a fourth monthly payment to the list. I started thinking about the fact that by the time they got one funeral paid off, somebody else would die – so they would be making monthly payments on at least three funerals forever.

When I began working at the largest Spanish-speaking parish in the diocese I found that the pastor was working with funeral abuses among his families. I began to help him with

information sheets warning about funeral prices and pre-pay plans that he was publishing for his families and was sending to other perishes.

One of the two or three decent morticians I've ever met brought us a casket catalog and the "secret" wholesale price list. He said that he was ashamed of the industry's prices and tactics. After I published some of the prices, he received a phone call saying "Since you won't keep your mouth shut, we have to teach you a lesson." Within a day or two his mortuary was burned down; firemen said it was arson.

A casket distributor was warned by one of the largest casket companies that his casket supply would be cut off if he continued delivering to the mortician, and sugar was put in his truck's gas tanks to destroy the engines. After I published a survey of the prices of all area mortuaries, all of the tires of my car was slashed and I received a death threat.

In 1982, a group of us clergy and lay people formed the IFIC, the Interfaith Funeral Information Committee. We set up an information hotline, which has now received more than 40,000 calls. We began doing surveys of mortuary prices every few years and presented seminars. While Memorial Societies normally restrict their information to their paid members, usually only a small percent in a community, we have always felt a duty to provide our information to all families, churches and the media. I helped the state's largest newspaper with a front page report on clergy/mortuary bribery.

In its 1975 report of its nationwide investigation of the industry, the FTC said that the whole industry worked together to keep its wholesale prices "TOP SECRET" (sic). In 1983, I published the FIRST LIST OF CASKET WHOLESALE PRICES ever published in the U.S., along with a survey of the prices of all the mortuaries in the Phoenix area. I presented them to a legislative hearing. Legislators were astounded at the markups and prices, and asked why the great profit and difference in prices. None of the more than 20 morticians present offered any answer.

In the 1990s we began doing surveys of mortuary prices in other communities, usually for TV stations. Our most comprehensive was the HOUSTON SURVEY which I've provided you.

- COLUMN 2 shows mortuaries selling caskets that wholesale for less than \$300 for retail prices from \$450 all the way up to \$5,900.
- COLUMN 4 shows one mortuary charging \$1,495 for a casket and funeral services at a church (not using any mortuary facilities), and others charging \$3,000, \$5,000, \$8,000 and \$9,000 for the same priced casket and church funeral.
- COLUMN 5 shows the same Direct Cremation with no casket, viewing or services priced from \$450 to \$3,985.

- COLUMN 6 shows the charge for picking up a body at the airport ranging from \$335 to \$2,150.

This information should shock you.

This is an industry whose mode of operation is secrecy, fraud and ripping off the public, along with the misinformation constantly disseminated by mortuarians and the National Funeral Directors Association. Our website (www.xroads.com/~funerals) and other materials describe more than 100 DECEPTIVE SALES PRACTICES, many of which are used by EVERY U.S. MORTICIAN, and by most cemeteries and pre-pay plans. These practices are common, deceptive, fraudulent, many of them absolutely criminal, and account for MORE THAN HALF of the industry's billions of income each year.

There are two reasons for the industry's rip-off:

1. There are 5-10 TIMES TOO MANY MORTUARIES (according to the industry's own experts), many mortuaries with only a couple of funerals a month;
2. DESIRE FOR HIGH PROFIT, that is, GREED.

Let me list the four most egregious categories of deceptive practices:

1. OUTRAGEOUS, EXTORTION PRICES, often 1,000 percent higher than needed. The COLOR BROCHURE of our GOOD SHEPHERD FUNERAL PROGRAM which I have provided to you shows photos of caskets, along with a) the outrageous prices charged by mortuaries, 2) the secret wholesale prices of the industry, for whose publication morticians would like to bury me, and 3) the low, fair prices available to families through this demonstration program.

LOOK AT one or more of the caskets. Guess what your family has paid for them and how much you were ripped off.

Be shocked at the amount of money morticians have stolen from each of you senators – and from the millions of elderly people who are living off of social security – not counting the thousands more stolen from each of them for their funeral services listed on the back page.

Morticians could charge these prices, but prefer to rob every U.S. family.

2. PRE-PAY PLAN DECEPTIVE TACTICS AND CONTRACTS: Prepay plan sales tactics of mortuaries and cemeteries are so bad that MONEY magazine's staff published an article entitled "Don't Prepay Your Funeral." These tactics include:

- a. "bait and switch" tactics that outdo any other industry.
 - b. "fine print" in contracts of the best-known companies that go so far as to state that:
 - c. (1) "No promise or agreement made by the salesperson, whether oral or written, is valid." – meaning that salespersons can lie about every part of the contract in order to get it signed.
 - d. (2) Wording that says that "the company can cancel the contract retain all money received" if a monthly payment is late.
 - e. (3) Merchandise can be delivered "AS IS," that is, damaged.
3. NATION-WIDE CHURCH PARTICIPATION IN THE RIP-OFF, with payoffs and "gifts" to many church officials, clergy and parishes. The rip-off of their own congregations amounting in millions per month.
 4. The MOST LUCRATIVE FRAUD used by EVERY U.S. MORTICIAN to rip-off EVERY U.S. FAMILY, the "PROTECTIVE SEAL" casket. The casket doesn't protect but bloats and destroys the bodies of most families within a few months. They explode in mausoleums daily, spewing liquefied body parts out of the caskets, with morticians taking a good part of the body parts with it to the city dump.

I've provided you one of the INFORMATIONAL ADS which we've placed in the National Catholic Reporter newspaper to expose and explain to my religion's leaders and people about the clergy participation in the ripoff, the fraud of "protective seal" caskets, and other abuses of the industry. A nationwide SURVEY of clergyman in 1958 by the National Funeral Directors Association showed that 51% of Protestant ministers and 41% of Catholic priests believed that morticians "EXPLOIT" their congregations. Yet, there has never been any noticeable effort by any denomination to do anything about it.

I would be happy to speak about any or all of the abuses today, or anytime you or your investigators wish to delve into them. Steps must be taken to stop all of them because this industry's theft of more than FIVE BILLION dollars per year injures nearly every U.S. family, but is most harmful to those of modest and low-income and the elderly. The theft is more than a half-million per week in my community alone.

Thank you for your concern, and hopefully, for legislation to help stop the abuse of our elderly.

Mr. ROBERTS. Excuse me, Senator Grassley. I apologize, but I must leave, if it is all right with the committee.

The CHAIRMAN. If you have to leave, we have to understand.

Mr. ROBERTS. I would be happy to answer any questions.

The CHAIRMAN. We will submit them to you for answer in writing. Thank you very much.

Mr. Hankins.

STATEMENT OF LAMAR W. HANKINS, PRESIDENT, FAMSA-FUNERAL CONSUMER ALLIANCE, SAN MARCOS, TX

Mr. HANKINS. Thank you, Mr. Chairman, Senator Breau. I am here as the President of the Board of FAMSA-Funeral Consumers Alliance. We are the only national organization that concerns itself exclusively with the broad range of end-of-life issues—organ and tissue donation, the use of advance directives for planning and for addressing medical concerns, protection of consumers' rights in the death care marketplace, and education of the public about their end-of-life options. We promote cooperation among disparate groups at the local and national level, advocate for consumers, and seek fairness and justice for all regardless of economic condition or social status.

FAMSA-FCA was created in 1964. Today, we are a federation of 125 member societies, including the Orlando Society that was represented in the Carriere news report which you saw a few minutes ago. We are all non-profit, non-sectarian groups focused on education and advocacy for consumers. We seek public support from those who share our views that families should not be exploited at a time of profound vulnerability while they are grieving the loss of a loved one.

Memorial societies in this country originated out of this concern in Seattle, WA, in 1939, when parishioners of the Congregational Church of the People became dissatisfied with the exorbitant fees charged by undertakers and with the emphasis on lavish funerals. They organized themselves to remedy these conditions.

During the 1950's and 1960's, commentators provided extensive proof that death practices in the United States are among the most elaborate and costly in the world, primarily for three reasons. No. 1, consumers don't plan and shop for funerals the way they do for other expensive items like homes or cars, perhaps because we live in a culture that shuns talk about death.

No. 2, the number of funerals homes far exceeds the need in most States, creating enormous economic pressures on traditional funeral directors to over-price their services and merchandise. No. 3, some funeral homes use marketing methods and strategies that manipulate grieving people.

In 1984, after years of study, the Federal Trade Commission began regulating the funeral industry to curb the worst abuses. Memorial societies and their members have led efforts to secure protection for consumers through the FTC and State legislatures, and they have focused on educating consumers about their rights and options, publishing funeral price surveys, distributing pamphlets dealing with end-of-life concerns, encouraging funeral planning as opposed to pre-paying, and in some cases contracting with

local funeral providers for reasonably priced funeral and memorial services for their members.

In the last 3 years alone, the FAMSFA-FCA office has received more than 7,000 e-mail messages and 12,000 telephone calls primarily from consumers seeking information to help them deal with the death care industry. Problems with the sale of pre-need contracts for funeral and cemetery services are foremost among consumer concerns. The pre-need funeral and cemetery business is a multi-billion-dollar-a-year industry, as the chairman noted at the beginning of this session.

Over \$2.1 billion in contracts are now in force in Texas alone. Sales quotas and hard-sell tactics are common, especially among the conglomerates. Independent funeral homes, feeling pressure to compete or lose their expected market share to aggressive sales teams, are abandoning the more passive practice of waiting for a consumer inquiry.

Those who have studied bereavement find that many people need grief assistance for 18 months after the loss of a loved one and are most vulnerable in the 2-month period after a loss. And yet this is the very time when pre-need sellers descend on families to make new arrangements. The example of the 80-year-old Florida widow who was hounded four times in 2 months after her husband's death by a pre-need salesperson illustrates the predatory practices of the industry.

Some death care corporations require their sales force to use at-need funerals to find prospects for pre-need sales. Pall-bearers and family members of the deceased are sought after for pre-need purchases. Such predatory sales practices might be positively affected by a no solicitation period after a family death, such as we have in Maine, Oregon, and Wisconsin. And in Iowa, we have pre-need solicitation prohibited at hospitals and nursing homes.

The pre-need industry advertises its services with two arguments: No. 1, pay now to beat inflation; and, No. 2, give your family peace of mind. Both assumptions are misguided, at best, and cleverly deceptive at worst. Sixteen months ago at one Austin, TX, funeral home, direct cremation services were advertised at \$1,434. One month later, the price had dropped by almost one-half to \$740 because of increased competition. Anyone purchasing pre-need at the higher price would have felt gouged.

Instead of inflation, we had dramatic deflation in the marketplace because a new funeral home had opened for business and was competing by offering affordable prices, not the usual practice in the industry but one that is becoming more common throughout the country.

When consumers purchase pre-need contracts, they frequently believe they have taken care of everything, and they often say this to their children. But additional expenses arise because caskets cannot be adequately described in the contracts, and ugly or unsatisfactory substitutions that fit the general description found in the contract are sometimes shown survivors, leading them to spend more for a different model.

Pre-need contracts do not cover unanticipated funeral home expenses for embalming after autopsies, for instance, or charges for organ and tissue donation, costs of restoration after disfiguring

deaths, special cosmetic procedures that may be needed, unexpected refrigeration costs when there are delays in arrangements, expenses of an outside funeral director when death occurs away from home, and charges for extra certified copies of the death certificate. Nor do pre-need contracts provide for third-party funeral costs such as opening and closing the grave, police escorts, obituaries, crematory fees, floral arrangements for the casket, clergy honoraria, costs of a religious facility for the service, cemetery charges for set-up of chairs and awning, various government-required permits, vault installation at the cemetery or mausoleum, and charges for inurnment services.

With all these and more extra charges, there is little peace of mind for survivors with pre-need contracts, but there certainly are additional costs not covered by those contracts. When most people make pre-need funeral arrangements, they don't think they are going to change their minds. But people move, they remarry, they die while traveling, or later decide on cremation instead of body burial. When changes occur, consumers usually lose money, sometimes half of their investment.

Pre-need State regulations are far from uniform and most are not consumer-friendly. FAMSA-FCA is encouraged by the congressional attention to funeral consumer issues, notably by this committee. We look forward to the contribution that your work may yield for the concerns that have been raised, and we appreciate the opportunity to participate today.

The CHAIRMAN. Thank you, Mr. Hankins.

[The prepared statement of Mr. Hankins follows:]

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Statement by Lamar W. Hankins
 President of the Board
 FAMSA~Funeral Consumers Alliance
 Prepared for filing with the
 Senate Special Committee on Aging,
 April 10, 2000

I. ORGANIZATION HISTORY

FAMSA~Funeral Consumers Alliance is the only national organization that concerns itself with a broad range of end-of-life issues – organ and tissue donation, the use of advance directives for planning and for addressing medical concerns, protection of consumers' rights in the deathcare marketplace, and education of the public about their end-of-life options. We promote cooperation among disparate groups at the local and national level, advocate for consumers, and seek fairness and justice for all regardless of economic condition or social status.

Our work has been highlighted in the last eighteen months in articles in *Life*, *Kiplinger's*, *Money Magazine*, *US News and World Reports*, *USA Today*, *Modern Maturity*, *AARP Bulletin*, in many local and regional publications, and by *Dear Abby's* advice column. We are at the forefront of the Federal Trade Commission's current review of the federal regulations governing the funeral industry. We have petitioned the FTC to bring cemeteries under the control of its consumer protection rules and expand other protections.

FAMSA~FCA was created in 1964. Today, we are a federation of 125 member societies—all nonprofit, nonsectarian groups focused on education and advocacy for all consumers. We seek public support from those who share our views that families should not be exploited at a time of profound vulnerability while they are grieving the loss of a loved one.

Memorial societies in this country originated out of this concern in Seattle, Washington, in 1939, when parishioners of the Congregational Church of the People became dissatisfied with the exorbitant fees charged by undertakers and with the emphasis on lavish funerals, and they organized People's Memorial Association (PMA) to help themselves and educate others. They were influenced by the funeral committees of the Farm Grange, which for decades had provided low-cost funerals

1-Filed testimony of Lamar W. Hankins, FAMSA~FCA, April 10, 2000, Sen. Spec. Comm. on Aging

for their members in rural areas of Washington state and elsewhere following cooperative principles. PMA has about 90,000 members today and exemplifies what organized consumers can do to combat abuses in the funeral industry and find the funeral and memorial choices they want.

II. CONSUMER PROBLEMS IN THE DEATHCARE INDUSTRY

During the 1950s and 1960s, commentators provided extensive proof that death practices in the United States are among the most elaborate and costly in the world, primarily for three reasons: (1) consumers don't plan and shop for funerals the way they do for other expensive items like homes or cars, perhaps because we live in a culture that shuns talk about death; (2) the number of funeral homes exceeds the need, creating enormous economic pressures on traditional funeral directors to overprice their services and merchandise; (3) some funeral homes use marketing methods and strategies that manipulate grieving people.

In 1984, after years of study, the FTC began regulating the funeral industry to curb the worst abuses. Memorial societies and their members have led efforts to secure protection for consumers through the FTC and state legislatures, and they have focused on educating consumers about their rights and their options, publishing funeral price surveys, distributing FAMSA~FCA pamphlets dealing with over 25 end-of-life concerns, encouraging end-of-life planning (as opposed to prepaying), and in some cases contracting with local funeral providers for reasonably-priced funeral and memorial services for their members.

In the last three years alone, the FAMSA~FCA office has received more than 7,000 e-mail messages and 12,000 telephone calls primarily from consumers seeking information to help them deal with the deathcare industry. Even though our primary purpose is education, we have logged more than 350 complaints from these contacts.

III. PRENEED CONTRACTING: A GROWING CONSUMER DECEPTION

Problems with the sale of preneed contracts for funeral and cemetery services are foremost among consumer concerns. The preneed funeral and cemetery business is a multi-billion-dollar-a-year industry. Over \$1.2 billion in contracts are now in force in Texas alone. Sales quotas and hard-sell tactics are common, especially among the conglomerates. Independent funeral homes, feeling pressure to compete or lose their expected market share to aggressive sales teams, are abandoning the more passive practice of waiting for a consumer inquiry.

Those who have studied bereavement find that many people need grief assistance

2-Filed testimony of Lamar W. Hankins, FAMSA~FCA, April 10, 2000, Sen. Spec. Comm. on Aging

for eighteen months after the loss of a loved one, and are most vulnerable in the two-month period after a loss. And yet this is the very time when preneed sellers descend on families to make new arrangements.

To give one example from Florida, at the time of her husband's death, one 80-year-old-widow, accompanied by her niece, made arrangements for a cremation bench and memorial at a nearby cemetery. Total cost for the two of them was about \$4,000. Two weeks later, without the niece present, the sales person showed up at the widow's home and talked her into body burial for herself—with a \$3,900 copper casket and a \$6,900 copper vault. Total for the new arrangements was nearly \$20,000. Nine days later, her funeral plan had grown to over \$45,000 for something called a "Family Estate" with \$6,000 worth of statues, and a full-body monument that cost over \$10,000. The sales person left her alone for almost a month before returning to up-grade the sale a third time. Then he sold her a \$37,500 casket and a \$50,000 private family mausoleum, even though she was the only member of her family left. In less than two months, the widow had spent over \$100,000 for funeral arrangements and owed over \$25,000 to the cemetery and funeral home corporation.

Some deathcare corporations require their sales force to use at-need funerals to find prospects for preneed sales. Pall-bearers and family members of the deceased are sought after for preneed purchases.

Such predatory sales practices might be positively affected by a no-solicitation period after a family death. Such solicitation restrictions are common in the legal profession to prohibit personal contact for a set period after a prescribed event such as a car accident.

The preneed industry advertises its services with two arguments: (1) Pay now to beat inflation, and (2) give your family peace of mind. Both assumptions are misguided at best and cleverly deceptive at worst. Sixteen months ago at one Austin, Texas, funeral home, direct cremation services were advertised at \$1434. One month later, the price had dropped by almost one-half, to \$740, because of increased competition. Anyone purchasing preneed at the higher price would have felt gouged. Instead of inflation, we had dramatic deflation in the marketplace because a new funeral home had opened for business and was competing by offering affordable prices — not the usual practice in the industry.

When consumers purchase preneed contracts, they frequently believe that they have "taken care of everything" and they often say this to their children. But additional expenses arise because caskets cannot be adequately described in the contract and ugly or unsatisfactory substitutions that fit the general description found in the contract are sometimes shown survivors, leading them to spend more for a different

3-Filed testimony of Lamar W. Hankins, FAMSA~FCA, April 10, 2000, Sen. Spec. Comm. on Aging

model.

Consumers seldom understand that preneed contracts do not cover **unanticipated funeral home expenses** such as the following:

1. extra embalming charges after autopsies or organ and tissue donation;
2. costs of restoration after disfiguring deaths;
3. special cosmetic procedures that may be needed because of the condition of the body;
4. unexpected refrigeration costs when there are delays in arrangements;
5. expenses of an outside funeral director when death occurs away from home;
6. charges for extra certified copies of the death certificate.

Nor do preneed contracts provide for third-party funeral costs, such as:

1. opening and closing the grave;
2. police escorts;
3. obituaries;
4. crematory fees;
5. floral arrangements for the casket;
6. clergy honoraria;
7. costs of a religious facility for the service;
8. cemetery charges for set-up of chairs and awning;
9. various government-required permits;
10. vault installation at the cemetery or mausoleum;
11. charges for inurnment services.

With all these and more extra charges, there is little "peace of mind" for survivors, but there certainly are additional costs not covered by the preneed contract.

When most people make preneed funeral arrangements, they don't think they're going to change their minds. But people move, remarry, die while traveling, or decide on cremation instead of body burial, now that cremation is more accepted. One provision that should be added to any preneed contract is prominent disclosure of the penalties for canceling or transferring such a contract. Only a few states require that 100% of all principal and interest be refunded on a canceled or transferred funeral purchase. Cemetery purchases are far less changeable. With the warehousing of merchandise frequently permitted for cemetery-related purchases, the consumer is likely to get no refund for a casket vault when changing plans to cremation, for instance. While such a disclosure will not deter a sale to someone who is clear about his or her funeral plans, it should appropriately give pause to others. And with respect to the purchase of grave sites, there is not a well-developed market anywhere in the nation for their resale if they are not used.

4-Filed testimony of Lamar W. Hankins, FAMSA-FCA, April 10, 2000, Sen. Spec. Comm. on Aging

Consumers who enter into preneed contracts that are funded by trusts maintained by the preneed seller are liable for paying taxes on the interest earned on the trust accounts even though they have no control over such accounts. Preneed sellers may agree to pay the taxes each year, but they are not required to do so. Those preneed contracts funded by insurance policies provide a very small return on the amounts paid if the policies are canceled. When an annuity is used to fund a preneed contract, survivors are left with the responsibility to pay taxes on the annuity at the time of death. Consumer purchasers of preneed contracts seldom understand these aspects of their purchase.

Consumers have other options for setting aside funds for their funeral expenses, but these options are not promoted by the industry because they do nothing to enrich it. With the average preneed contract lasting about seven years before use, according to some industry estimates, funds paid to providers can increase dramatically, often doubling in value. Consumers can make their plans and set aside ample funds to cover the costs by using joint bank accounts that provide for the right of survivorship with a trusted relative or friend; by buying a certificate of deposit jointly with another; by establishing a "pay on death" bank account to cover funeral costs; by buying whole life insurance payable to whoever will be responsible for making funeral arrangements; or by donating their body for medical education and research, thereby avoiding most, if not all, funeral costs.

IV. SUGGESTED CHANGES AND ADDITIONS TO EXISTING REGULATIONS

- A. **Eliminate the non-declinable fee.** Elimination of the nondeclinable fee, the charges made for the basic services of funeral director and staff and overhead, is essential if consumers are to benefit from the FTC's commitment to the principle that consumers should be able to purchase only what services and merchandise they choose. Fees that are nondeclinable by their very nature reduce consumer choice.

The single greatest price increase since the Rule went into effect—especially after the 1994 amendment—has been in the non-declinable fee. This fee has undermined the purposes of the original Rule "to promote full itemization and informed consumer choice." 59 Fed. Reg. 1592, at 1605. In 1982, the Commission asserted that:

... to the extent that itemization allows consumers to choose less than traditional funerals, the increased demand for less than full funerals may stimulate innovative new services and allow the market to respond. As a result, the long run effect of

itemization is expected to drive all prices down to the competitive level. 47 Fed. Reg. 42260, at 42298.

However, funeral prices won't go down if a substantial non-declinable fee is permitted to offset the astronomical casket prices prevalent in the industry for decades and which now are beginning to moderate in the face of competition from casket retailers. The non-declinable fee has simply become another form of "bundling." If a funeral home is allowed to put all overhead in the non-declinable fee, someone picking minimal services is paying for staff and facilities that were not used, negating the core purpose that was supposed to be guiding both the original and the amended Rule, "to permit itemization so that consumers may select only the funeral items they desire, and decline unwanted items." 59 Fed. Reg. 1592, at 1608. The same rationale that led the Commission to eliminate multiple non-declinable fees and package-only pricing dictates that all non-declinable fees be eliminated.

If the funeral home were selling goods and services at wholesale cost, the need to recoup overhead in a distinct non-declinable fee might be justified. In practice, however, consumers are being charged twice for overhead. Almost everything in the description of what the "basic" fee covers now belongs elsewhere on the GPL, in general overhead mark-up for specific goods and services:

- Conducting the arrangements conference. The time it takes to show your wares and describe the services you offer is a cost of doing business.
- Planning the funeral. This should be part of the options selected and will be different for a funeral with a viewing compared to a direct cremation.
- Consulting with family and clergy, and coordinating with the cemetery, crematory, or other third parties. Again, these tasks are necessarily included in the other options on the GPL.
- Obtaining necessary authorizations and permits. Certain permits may be necessary for removal, and should be part of that charge. Cremation permits should be part of the cremation charge.
- Shelter of remains. A funeral home would not be able to provide its services, such as embalming, if it didn't have custody of the remains. A sheltering fee should be permitted only after an extended period of time, possibly beginning on the fourth or fifth day after death.

The intent of those who drafted the Funeral Rule was that the non-declinable fee would be modest. See 59 Fed. Reg. 1592, at 1602. Indeed, the Commission required a disclaimer on the GPL stating: "This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains." 16 C.F.R. § 453.2(b)(4)(iii)(C)(1).

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After examining a multitude of GPLs from around the country, FAMSAs-FCA has detected a clear pattern of abuse of this fee. For example, if a non-declinable fee totals \$1,495, it cannot be included in a direct cremation charge of only \$895, or a forwarding charge of \$695. Furthermore, if the cost of an immediate burial is only \$1,195, and the family would like to add a \$250 graveside service, the total should be only \$1,445. But in one example, the bill suddenly jumped because the itemized prices — beginning with the “basic” charge, plus removal, plus the hearse to the cemetery — added up to \$2,295.

FAMSAs-FCA knows of no other industry that sets a non-declinable fee *unrelated* to the goods and services selected by the customer. Each item on a hospital bill, for example, must represent a specific service or item that was actually supplied.

FAMSAs-FCA understands that eliminating the non-declinable “basic” fee will shift costs. For those choosing a “full funeral,” the bottom line is not likely to change. But for a cost-conscious consumer, the elimination of non-declinable fees should yield genuine choices. Instead of an average charge of about \$350 each for embalming, viewing, and the funeral service, those charges might rise to \$800 or \$1,000. At that point, a consumer might decide that there would be a significant savings by skipping embalming and viewing; at least the choices are within the consumer’s control. This will never be the case so long as the non-declinable fee accounts for a large portion of the funeral bill.

According to responses received from the approximately 900 funeral homes that volunteered to share pricing information with the National Funeral Directors Association (NFDA), figures for an “average funeral” are as follows:

	Total	Non-declinable fee	% of total
1994	\$4,077	\$823	20.2%
1995	\$4,456	\$952	21.3%
1996	\$4,624	\$1,025	22.1%
1997	\$4,782	\$1,079	22.6%

(Because NFDA did not ask respondents to identify themselves, FAMSAs-FCA does not know whether the prices charged by funeral home chains are included in these averages.)

As the industry’s own figures show, next to deceptive package deals,

the major development in funeral pricing since the 1994 amendments has been the more than 30 percent growth of non-declinable fees between 1994 and 1997. In Vermont, the Memorial Society had conducted a state-wide price survey immediately prior to the amended Rule in 1994 and did one again the next year. The non-declinable fee for "basic services of staff" — already inflated in 1994 — rose 14.7% after "overhead" was permitted by the amendment. There was little or no change for other prices on most GPLs, even though the word "staff" had been added to various options, and one could have reasonably expected some costs to shift. With the larger non-declinable fee, the total for a "full service" funeral rose by 5% and for a direct cremation by 10%, according to the 1995 Vermont survey.

Other member societies have conducted price surveys as well. The figures were compiled from more than 2,500 funeral home contacts from around the nation for the years 1992 through 1999, for direct cremation, immediate burial, the non-declinable fee and a full funeral. The majority of these surveys were conducted in 1998 and 1999. They show the dramatic impact that the non-declinable fee has had on prices. The "basic service charge" for planning the funeral is now more than 40 percent of all service charges. Furthermore, the costs for minimum services are increasing at an annual rate of approximately ten percent.

FAMSA~FCA's surveys also demonstrate that the quarter of the population that is using chain-owned mortuaries are likely to pay between \$6,000 and \$10,000 for an "average" "full-service" funeral. The non-declinable fee is likely to be 50 percent of the service charge. Low-cost caskets may not be available at these funeral homes or are displayed in undesirable colors, such as "grasshopper green," according to two consumers that contacted FAMSA~FCA.

- B. Require funeral homes to include the crematory fee in the charge for a "direct cremation."** A majority of funeral homes do not include the cost of the actual cremation—the crematory fee—in their price for a direct or immediate cremation. There cannot be a "direct cremation" without a cremation of the body. Consumers are confused when some funeral homes include the cost charged by the crematory and others do not. Crematory fees in one community can vary by \$175 or more. Because the crematory fee need not be included in the price quoted for "direct cremation" on the General Price List (GPL), consumers have difficulty comparing prices from one funeral home to another. The services and merchandise included in immediate or direct cremation should be standardized so the public is not

deceived.

- C. **Eliminate charges for "identification viewing."** Charges for "identification viewing," the practice of requiring a family member to view the decedent's body for the stated purpose of identifying the remains, should be prohibited. About 60% of the funeral homes in the country are doing fewer than 150 funerals a year, three a week. This is not an environment in which there is a doubt about which body is on hand. For the 26% doing more than 200 funerals a year—four or five a week—it is simply necessary and good management to have an internal tracking system for body identification, but that is a responsibility of the business, not the client. A leading embalming text suggests that identification of the body is the responsibility of the embalmer or funeral director. Identification viewing seems to be used by some establishments to encourage the purchase of more expensive and elaborate caskets and cremation containers.
- D. **Require explanations of the differences between "graveside" and "committal" services.** Eliminate confusion on GPLs by defining the difference between a "committal" service and a "graveside" service, or make them one and the same, and require that consumers be told on the GPL whether a graveside service is included with the purchase of certain other services. In current practice, many funeral homes do not charge for a graveside service if the consumer purchases a "full-service" industry-promoted funeral, though many GPLs do not explain this. Current regulations permit consumers to be charged for the service at the whim of the funeral director if the GPL does not reveal that it is included with other services. If the graveside service is included with the purchase of other services, but consumers do not want the graveside service, they are paying for it without choice. Such a situation offends the principle that consumers be allowed to purchase only those services desired.
- E. **Require three additional options on the GPL.** Three other items should be added to the required options on the GPL because of their prevalence on many GPLs in recent years:
1. the cost, if any, of private viewing without embalming;
 2. the cost, if any, of body donation to a medical school;
 3. the cost of rental caskets, if available.
- F. **Require disclosure of the actual charge made for cash advance purchases.** Any mark-up on Cash Advance items should be disclosed with the actual amount to be charged. The statement commonly found on GPLs, "We charge you for our services in obtaining. . ." is not an adequate

9-Filed testimony of Lamar W. Hankins, FAMSA~FCA, April 10, 2000, Sen. Spec. Comm. on Aging

disclosure. Consumers are left vulnerable to any mark-up charged by the funeral home on third-party purchases for which the funeral home advances payment.

- G. **Require embalming price disclosure and explanation when permission to embalm is sought.** The price for embalming should be disclosed when the funeral director seeks permission to embalm, and the consumer should be given a written description of the embalming process which explains, also, the purposes of embalming.
- H. **Prohibit both "preservative" and "protective" claims for containers.** Vendors selling vaults or caskets should be restricted from making both "preservative" and "protective" claims. Consumers should be told in writing that no product keeps human remains from decomposing.
- I. **Require an "estate and records fee" as an option on GPLs.** An "Estate and Records Fee" should be added, as a declinable option, for assistance with social security forms, applications for Veterans Administration benefits, insurance forms, estate filings, and obtaining a death certificate after transfer of the body to the funeral home. In many areas, medical personnel are notoriously uncooperative in completing final paperwork in a timely way. Even though, by law, a death certificate is required in most states prior to removal, most ignore the law when a funeral director arrives to pick up a dead body. Later, funeral home staff must be sent to the doctor's office, or to chase the doctor down on his or /her day off to get the necessary signature and cause of death. Obviously, many families will not want to do these things at a time of grief, but medical personnel seem to become more responsive when the family is involved. The possibility of saving several hundred dollars by declining an "Estate and Records Fee" should be a consumer's option, however. Many family members are quite capable of handling all other paperwork as well, and having "something to do" can be therapeutic. The "Estate and Records Fee" could be a fixed fee or a per-hour charge.

V. SUGGESTED NEW REGULATORY INITIATIVES

- A. **Federal preneed regulations are needed.** Federal regulations governing preneed funeral and cemetery contracting should be adopted to eliminate the hodgepodge of existing state regulations, protect consumers when they move from one locale to another, allow for a reasonable return of funds paid when the preneed purchaser's circumstances change in ways that make use of the contract unfeasible or impractical, and disclose the less desirable aspects of

preneed contracts. Consumers would benefit from a no-solicitation period after a family death that takes into account the effects of bereavement. Any preneed contract signed by a consumer after a contact initiated by a preneed vendor should have a sixty-day cooling off period during which the contract can be rescinded by the purchaser.

- B. All deathcare vendors should be brought under the Funeral Rule.** Cemeteries, monument dealers, and casket sellers should be brought under the Funeral Rule. This change will put all funeral vendors on the same footing and better protect consumers' rights when they make funeral-related purchases.
- C. Require the FTC to enforce its funeral regulations with effective administrative penalties.** Currently, the FTC allows the industry to regulate itself through the Funeral Rule Offender Program (FROP). Funeral homes found out of compliance with the Funeral Rule are allowed to attend a training program about the Rule's requirements. They then make a small business-deductible "contribution" to the government. The Funeral Rule has been in effect for sixteen years. There is no reason for any funeral home to be out of compliance because they don't know about the regulations. Any regulatory scheme, like FROP, that permits an easy way out of a determination of non-compliance with the regulations will not be taken seriously by the industry and harms consumers. Further, the names of FROP participants are being kept from public scrutiny by the policies of the FTC, so consumers have no way to learn of an establishment's violation of FTC regulations. Experience suggests that only when the risk of non-compliance is severe will an industry like the deathcare industry successfully self-enforce. For these reasons, we believe that effective administrative penalties with public disclosure of the names of violators are essential if consumers are to benefit from the FTC regulations.

VI. CONCLUSION

FAMSA-FCA is encouraged by the Congressional attention to funeral consumer issues, notably by this Committee. We look forward to the contribution that your work may yield for the concerns that have been raised, and we appreciate the opportunity to participate. Consumer protection is a worthwhile purpose of government and has been shown by experience to be particularly needed in dealings with the deathcare industry.

The CHAIRMAN. Now, Dr. Shreve.

STATEMENT OF ROBERT SHREVE, AMERICAN ASSOCIATION
OF RETIRED PERSONS, WASHINGTON, DC

Dr. SHREVE. Thank you, Chairman Grassley. My name is Robert Shreve and I served as Chairman of the Board of AARP from 1994 through 1996. 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 pre-need 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.

In testimony submitted for the record, we focused on problems encountered by consumers when pre-planning, arranging, and conducting funeral and burial activities. We provided examples of problems consumers face in dealing with funeral directors, as well as cemeterians, and expressed our belief that the Funeral Rule should be expanded to include all providers of funeral and burial goods and services.

The statement also details concerns we have with cremations, offers from third-party providers, Internet sales, and industry consolidation. AARP conducted survey research related specifically to the funeral and cemetery industries, and we submitted copies of our research materials for the record, including a recently concluded survey regarding the lack of public awareness of the Funeral Rule.

In our testimony today, AARP has chosen to focus on the problems associated with the sale of pre-need contracts. AARP recognizes that the majority of funeral and burial service providers are reputable, caring, well-respected business persons who represent their industry well in the communities that they serve. Our concern lies with those providers 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 a recent nationwide AARP survey on pre-need funeral and burial arrangements, 43 percent of the population age 50 and older—that is in excess of 28 million people—report being solicited about the purchase of pre-need funeral arrangements. Thirty-six percent reported having paid in advance for either funeral or burial arrangements. These high participation percentages translate to an estimated \$40 billion currently sitting in pre-need 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 differing 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 pre-need scandal in Pennsylvania, the State legislative audit agency reported that, "State regulation of pre-need sales in Pennsylvania is seriously deficient." In March of this year, 4 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 pre-need funds.

The death of a family member or loved one creates emotional trauma, stress, and a myriad of other matters that might be reduced if consumers felt more comfortable planning in advance of the incidence of death. An AARP Public Policy Institute survey of State laws regulating pre-need funeral and burial contracts shows that discrepancies exist in the manner in which States regulate this growing component of the funeral industry.

A concern that AARP has with the sale of pre-need contracts is the fact that consumers do not know where their money is being held. Findings from a five-State telephone survey on the pre-need and burial arrangements of older Americans are revealing.

According to the report, "Considerable proportions of individuals reported that their pre-paid funeral and burial funds are either not invested or they do not know what happens to their funds." Similarly, only 13 percent of cemetery mystery shoppers received information on cancellations or refunds in that investigation.

As pre-need 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 pre-need 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 pre-need agreement, and what goods and services are included in the contract.

Mr. Chairman, AARP is concerned about consumer protections in what one analyst believes will be the golden age in death care with the gradual demise of the baby-boomers. 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. We look forward to answering your questions.

[The prepared statement of Dr. Shreve follows:]



TESTIMONY OF

Dr. ROBERT SHREVE

PAST CHAIRMAN, AARP

Regarding

Funeral and Burial Practices

Before the

United States Senate

Special Committee on Aging

April 10, 2000
106 Dirksen Senate Office Building
Washington, D.C.

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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 with the belief that coverage under a federal sales rule would better protect consumers.

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. 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 AARP does not believe in usurping the rights of the states to regulate, minimal federal contract standards regarding preneed contracts would not be preemptive. Despite the fact that 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.

The CHAIRMAN. Thank you, Dr. Shreve, and thanks to all of you, particularly those of you who were early and sat through—well, you all sat through the same amount of testimony. We appreciate it. I let it go longer than usual because I think that there was such good information and firsthand information that we ought to hear it personally.

Also, for those of you who did not go through your entire statement, it will be printed in the record as if you had.

I will start with you, Ms. Pepson. By the way, a lot of the questions I had thought about asking have been answered already, but I still have a few. I am going to start with you, Ms. Pepson. First, let me extend my heartfelt sympathy to you for what you have been through. Obviously, we are all appalled by the callous and disrespectful behavior of cemetery employees who handled your grandparents' burial sites.

Following on that, can you tell me what sort of explanations were given for their actions?

Ms. PEPSON. This resulted in a lawsuit. I was the plaintiff and I had sued several of the people involved in that disinterrment and in the problems with the casket. I don't have their depositions at hand, and if memory serves—I am talking over the past 10 years; this case was settled in 1997. As memory serves, I believe the undertaker said he wasn't aware that he was required to get permission before he disinterred my grandmother. That was prior to my knowledge that there was a problem there.

The cemetery management said, I believe, that the mausoleum that my grandparents had purchased was put in their cemetery by a monument manufacturer and they had no authorization to do that. That was pretty much the gist of it. Basically, everybody passed the buck.

I called the Department of Health. I wasn't getting many answers. I was getting a lot of pregnant silences on the other end of the phone when I called and said, "What am I to do, my grandmother is leaking out of a mausoleum up in the cemetery." And I think people were shocked by it and they didn't know where to tell me to go.

I believe the Department of Health in Pennsylvania is responsible for inspecting mausoleums. I cannot tell you whether that is done on a regular basis or not. I think the problem with these types of issues and causes of action is that as a consumer you don't know where to go. In my case, this was a case of first impression in the State of Pennsylvania. I was a law librarian at the time, near the end of this case, and I did find a case. It was in, I believe, the northern part of Pennsylvania, but it was published in one of the county reporters, a small soft-bound volume. It wasn't in Atlantic 2d. I just happened to find it because I was rather tenacious in looking for case law. I found case law in other parts of the country, but that would only be persuasive in our courts in Pennsylvania.

I did indeed find a case. I believe it was in 1971. A woman had buried her husband and he was leaking out by 1973 or 1978. I believe it was a Batesville casket. I have that case here. I mean, I don't want to be quoted on that because, of course, I have got volumes of information over the last 10 years. But I believe they set-

bled for something like \$25,000 and went about their way, and it was only reported in that county journal.

It was a really hard time for me because in the beginning I felt like I was the only person in the world that this had ever happened to. I had written to State Senator Richard Kasunik and Senator Santorum. They did try to give me some guidance, to give me some answers to the questions I had. Basically, it came back, you know, that what happened to Ms. Pepson should have never happened, but we believe it is an isolated incident.

You know, they kind of compared the way we bury bodies in this country to the way they mummify bodies in Egypt, and I certainly have been to Egypt and I know what they do in Egypt is really not what we do in this country to prepare bodies for internment.

I think my frustration to this day and somewhat of my anger that has continued is that I have never felt any closure. I can't accept what happened to my grandparents' remains, and I am really looking for you and this panel to institute some type of Federal regulations because I think the States are very spotty, possibly, in what they regulate and how they regulate it, if they do at all. And I think that some Federal mandate needs to come down to govern this industry so that we all have a framework from here on out to go to.

I am not the only consumer out there. I have supplied your staff with newspaper articles of other cases. I have been contacted by other people involved in similar problems that I have had. In fact, in one of the pleadings that the undertaker filed when they were, I believe, at that point looking for summary judgment—this is a quote; it was in the newspaper. It stated, in his pleading, "To allow the claim to stand would be opening the door for a flood of litigation where everybody could bring suit for casket leakage."

Well, if that is the case and these caskets are leaking, and they are presented to you that they are sealer caskets and they will preserve the body, well, then maybe that is what they need; cases to come down the pike and for this to be rectified.

So I am just concerned that there is nothing for people that are going to come behind me. There is not going to be any framework or any laws governing this industry that are stringent enough for people to get closure and to get restitution. I never even got an apology. The undertaker nor any of the people involved ever even told me they were sorry.

The CHAIRMAN. Thank you.

Senator Breaux.

Senator BREAUX. It is hard to know where to start. I thank all of you very much for your presentations. They have been very, very helpful. It is something that most people really don't enjoy, and I sure don't either, having to discuss. It is also an area where I think that most people do not do comparative shopping very well in terms of finding where to go to bury deceased loved ones.

It is an area I envision as being an area that people put a great deal of trust in the fact that things are being done properly. So it is incredibly disturbing when you find out real-life examples of things that have gone totally in the wrong direction. And for those of you who have had those experiences, let me also join with the

chairman in apologizing and expressing our concern. The ability to try and fix these problems is obviously why we are here.

Let me ask anyone to comment. We have the Funeral Rule that was supposed to set out some practice standards that were going to be enforced by the Federal Trade Commission. Do any of you have any comment as to whether that works like it is supposed to?

Ms. MOORE. Being a consumer, I would like to comment on the Funeral Rule. In the L.A. County area where I live, the majority of the mortuaries, when you tell them about the Funeral Rule, they don't have a clue. I remember when my aunt passed in 1998, I believe, and we went to a particular mortuary and they were giving us a package deal. And we were going, no, we are going to go outside and get a casket. They said, "No, you can't do that because we can't allow you to do this and do that." And I said, "Well, excuse me, the Funeral Rule that is on the books by the FTC says that I can." I had to produce a copy of it.

Senator BREAU. Well, I tell you, if the funeral people that you were dealing with said they didn't understand or know about the rule, I bet you there is not one in a thousand consumers that know that it exists out there.

Ms. Lankford, are funeral homes generally aware of the Funeral Rule or do they ignore it? They think it doesn't have a lot of teeth? Do you fear it, or what is the impression from your perspective of the Funeral Rule?

Ms. LANKFORD. Senator, funeral homes are aware of it. Especially, the No. 1 rule is to hand the family a general price list as soon as they sit down before you even divulge any prices to that family and start going over it, whether it be an itemization list or in total.

Do they adhere to it? No. Do they get caught? No. This is something that is so widespread that there is no way to control it. So just like they had said before, there is a handful that may adhere and then buckets full, of course, that do not. So it is not totally adhered to, no, sir.

Senator BREAU. That is the real challenge. I mean, No. 1 is to determine whether the rule is adequate, and, No. 2, whether it is enforced. I mean, every program we have as a government, you name it, there is going to be—when the program is instituted, the next day there will be people dedicated to scamming it, whether it is the Medicare program or whether it is the defense appropriations, the contractors.

Generally, in all of these industries, most people who deal with these programs deal with it in good faith and try and make it work. But there are always examples of people trying to scam the system, and that is why we have laws to make sure that they are enforced. I was talking with the chairman about whether it should be expanded, and if it is expanded, it should be given some teeth.

Do people fear the rule?

Ms. LANKFORD. Senator, I think what is in force, it is like anything. This is a change in society, and the last time that the Federal Trade Commission was looked at in 1984 and then on—I think that what they have in place is viable. I believe that it should be brought up to this century's standards. I believe that what they have in force should be revisited. And as this comes to trial and

as this panel of constituents sits before you on the consumer's behalf, I feel that the industry knows that we are out there, that we are doing something.

Just in my small area, as an independently-owned funeral home I have the corporations on two sides. I fight them everyday. I fight what they do, I fight their pricing tactics. I just believe that it needs to be tweaked and brought up to codes of standards of what we are going through today as our industry has changed also.

Senator BREAUX. The Federal Trade Commission up here in Washington has limited resources in this area. It has not been a high priority for them to enforce the Funeral Rule. And some would say, "Well, we have funeral boards in all of the States that license the funeral directors and the funeral homes." I am sort of impressed, in a way, and depressed at the same time that most of the funeral boards are made up of people who are in the industry themselves.

If someone says, "Well, look, Congress, you shouldn't be worried about this because funeral boards in the various States are regulating these industries," what would your comments be?

Father WASIELEWSKI. Let me just jump back to what you were saying there. The industry tells its morticians not to follow the Funeral Rule. One of them—I will name it, Profitable Mortuary Management—says in one of its publications the mortician should place the price list in front of the person and then immediately place over it a package price list with no prices on it, saying, "You know, this FTC thing is just too complicated for you to read." And I can provide you with a copy of the page of that magazine or seminar thing that says that.

Senator BREAUX. I would like to have that.

Father WASIELEWSKI. There are some other mortuaries that use five price lists.

Senator BREAUX. You see, my question is are funeral boards—the real question I am looking for are States adequately equipped to regulate this industry or is it so bad that it requires the Federal Government to step in? There are a lot of examples where we don't do a very good job either.

Dr. Shreve, when AARP did their survey, any comments or information gleaned about whether the States were doing an adequate job?

Dr. SHREVE. We found that non-compliance was about two or three times as high as the FTC said it was. And even the GAO disagreed with the FTC in terms of their percentage of people that were not in compliance with it. They said 10 percent, we said 30, and the reality is maybe in between.

Senator BREAUX. If the FTC is only touching a small number requiring compliance, what about the States? I mean, it is hard to say. You have got 50 different States. Some of them are going to be stronger and some of them are going to be less effective. Are the States doing a decent job and an adequate job or what?

Dr. SHREVE. I suppose that varies among the States. The Funeral Rule when it was written applied only to those providers that were providing both funeral goods and services. And ones that were not in that total business—that is, like cemeteries and crematories

and third-party sellers—were not covered by that. So there is no control over that part of the industry.

Senator BREAUX. Does AARP think it should?

Dr. SHREVE. Yes.

Ms. LANKFORD. Senator, even we think it should. There are so many little, small pockets of agencies that we deal with with cremation societies and everything. It is so simple in the State of Florida to open up and do, it is hard to regulate even on a State level.

When we get examined every year, we have what they call a funeral home health examiner that comes up from the Board of Professional Regulation and Funeral Services and they charge us \$250 and they come in to inspect our funeral home and look at our general price lists, see that they match the caskets up in the selection room, see that everything is in order. And they walk in with an examiner and he goes, "OK, now what do I do?" I said, "I pay you \$250 to come in and ask me what you have to do to regulate me?"

Ms. MOORE. I would like to speak to that. On California's issue, as you know, from the Los Angeles area where I am from, the cemetery that I started a non-profit for was shut down by the State regulatory agency, and this was 5 years ago. There was extra funding put in. The cemetery board itself was disbanded because of no funding. There was extra funding put in and the Department of Consumer Affairs took over.

Yet, in the last 2 weeks we have had another cemetery shut down on not as wide a scale as Paradise, but with the same allegations and some of the same practices. Before Paradise, in 1995, there had never been a citation of a cemetery before Mr. Guinta came in, who was the CEO of the cemetery board.

So I would say that there is absolutely no accountability. The regulatory agencies are there. There is no accountability, so unless we can find some sort of an accountability process, all the regulations you make in the world will not do the consumer any good. Consumers are protected by accountability. When our legislators can't tell us anything, law enforcement can't tell us anything, then what is the rule?

Senator BREAUX. Thank you. Let me ask one final point, and that is the question, all right, consumers are protected by competition. If you don't like the services of a particular funeral home or operation in your area, the word gets out and people are not going to use that facility in the future. They will go to the one that does follow the rules and does provide adequate and decent services. So, Senator, you don't need more rules; competition will solve the problem. Any comments on that?

Ms. MOORE. Competition? When you don't know what the rules are and you feel in your gut, like with Paradise, they were recycling graves—there are over 27,000 bodies buried in a 10-acre parcel of land. When you go year after year and you have a sense that something is wrong, but you have not a clue what it is because you know that they can't be doing anything wrong because there are people that watch over that—we have to pay for burials; we can't just bury our loved ones in our backyard.

So when you don't know that you can shop around, you don't know that if they don't tell you this, you don't know if you have a question there is a State agency you can go to, when you never

dealt with a mortuary that is 2 miles over, when you have always dealt with the same mortuary and they tell you the same thing—well, we are taking care of things the best we can; all of them do this—what do you do?

Senator BREAUX. So your point is competition doesn't work.

Dr. Shreve, what about consolidation? You mentioned something about that in AARP's statement.

Dr. SHREVE. I think that we are not asking really for prescriptive Federal intervention, but—

Senator BREAUX. In fact, you all recommend that we do not supersede the State rules through Federal preemption. Is that correct? Is that AARP's position?

Dr. SHREVE. Yes, with the caveat that a set of model rules would be useful because States—

Senator BREAUX. More than the current FTC Funeral Rule has?

Dr. SHREVE. No. The Funeral Rule itself is not up to date with what it needs to be in terms of the proliferation of new entities within the funeral industry. So the problem cannot be solved that way without a change there.

Senator BREAUX. Are you all concerned about the consolidation?

Dr. SHREVE. To the extent that it puts the consumer oftentimes in a less competitive position than he would have been otherwise, yes, we are.

Senator BREAUX. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Breaux.

Ms. Moore, what do you think would have happened if your organization did not take over management of the cemetery?

Ms. MOORE. The cemetery would have been abandoned. In several properties in the State of California, you have several abandoned cemeteries with no viable means of keeping them open. Family members have to go out and technically clean the grounds, make sure that the grounds are not vandalized. There is a facility in Verdugo Hills, in the Burbank area of California, that over 10 years ago this property was abandoned. There is no owner of record to this property. The State has seized what little funds there are in the endowment, so-called care fund, to take care of the property. It is not enough to do a good job. There is no maintenance on the property.

That is what would have happened to Paradise. It would have been an abandoned property, and family members that could go over—there was a period of 3 months that the cemetery had no means of staying open. Myself and my family personally kept the gates open until litigation was started, and when litigation was started the cost of litigation kept the cemetery open. It was one of the factors that kept the cemetery open.

The CHAIRMAN. Ms. Lankford, what documents did you review in preparation for the Carriere trial? Do you believe that you have a clear understanding of the positions of all parties to this litigation? And, last, did the defendants deny selling \$132,000 in funeral goods and services to Ms. Carriere when the formal response was filed in court?

Ms. LANKFORD. On question No. 1, Senator, I received copies of all the trusts that were produced from Service Corporation International and Glen Abbey as their operating company. I reviewed all

of the trusts that were there and that is when we started noticing the mistakes and the things which, of course, had been brought to their attention. And they had had much more, I guess, appropriate legal counsel than just from myself from my opinion.

Second, the prices of the contracts and everything that was mentioned in them—SCI did know every contract. When they bring these back into the office, they are supposed to have what they call a trust manager that goes over these contracts that says they need to be redone or revisited or cleaned up. And they were aware of the amount of money that had gone through.

At that point, whenever it got to be, I believe, around the \$52,000 mark, there were marks all the way through that should have thrown up red flags to them, but the red flags were quickly colored over because of the amount of profits and the dollar signs.

The CHAIRMAN. Well, did the defendant deny selling the \$132,000 in funeral goods and services when the formal response was filed in the courts?

Ms. LANKFORD. No, sir, they did not deny it was sold.

The CHAIRMAN. To Mr. Hankins, can you tell us about the marketing methods and strategies used to manipulate grieving people that you alluded to in your statement?

Mr. HANKINS. Yes, Senator. The industry teaches sales techniques much like any other industry does, except that you have a few different things you can appeal to when you are dealing with grieving people. Their social status is one thing that is appealed to. You will get statements from salespeople, you know, given the status of your mother or your father, I know that they would want this.

Former Supreme Court Justice Hugo Black's daughter wrote a piece that she has allowed us to use to produce a pamphlet about selecting the casket. The funeral director here in Washington could not believe that they wanted a simple, plain pine box casket for a man of this stature, and so they used the position of this person in the community to try to appeal to their social status needs and the position of the family.

They tried to pit one family member against another, and frequently this happens. I have had personal experience with this happening with my own law partner, where she and her sister were pitted against each other because they had different ideas about what should be done.

Whatever the situation is that is presented to the funeral director through the creative salesperson, they will look at those factors and they will go that direction, if it is status in the community, if it is perhaps appealing to guilt. This is one of the major things that the industry does is appeal to guilt, which everyone has at one level or another, and the secret of the good salesperson in this situation is to figure out where that guilt is with that particular individual and tap into it.

The CHAIRMAN. Now, your explanation may be partially an answer to my second question. Does what you just described to me also apply to what you referred to as the hard-sell tactics that are used in the pre-need contracts, or are they somewhat different, and the sales quotas that you talked about?

Mr. HANKINS. Well, it happens both pre-need and at-need. You can certainly appeal to status in either situation. With respect to what I call the real hard-sell tactics and policies of particularly the conglomerates, they require—for instance, I know of one of the conglomerates in the Dallas, TX, area that requires that their pre-need salespeople sell \$10,000 funerals. If they don't average \$10,000, then they lose that position; they get some lesser position with the company. That is twice the average cost of an at-need funeral. And so the conglomerates set quotas because they are looking at the bottom line. That is what they are primarily looking at, increasing the profits for their stockholders.

The CHAIRMAN. Father, you said you received 40,000 calls and you tried to take care of most of these yourself. Try to be as narrow as you can. What is the most common complaint, and were you able to resolve them and were you involved in resolution yourself?

Father WASIELEWSKI. The complaints are so widespread.

The CHAIRMAN. There isn't a common complaint, then, that you could focus in on?

Father WASIELEWSKI. Well, as I mentioned, 140 deceptions and not one of them is mentioned in the Federal Trade rules. I mean, there are all these things. A mortician who tells a family—or he wants to charge them \$2,000 to bury a 6-day-old baby. A television station called me and asked me if I would help this family. I got another mortuary that said they would do it for \$300, and so the mother went over to see the new mortician.

When the first mortician found out about it, he called the dad, who was at work, and told him, "We will sue you if you try to move that body." So the dad then called the other mortician and said, "Tell my wife to come home." And the mortician said, "I will get a hold of the attorney general, and the dad just said, No, no, no, we don't want to get in trouble." So there is this kind of pressure.

There are morticians who say it is going to be too costly to move. One of the points that we make on here is you have the right to move the body at any moment in the transactions. Even if the body is there, even if you have signed a paper or whatever, you have got the right to move the body to another mortuary. But morticians will make up all kinds of stories; we have started to work on the body. One mortician, after he had told the family that on the phone, got off the phone and said to me, "We haven't even touched the body."

The CHAIRMAN. I will go to Dr. Shreve now on another point. What is your response to those who argue that the cemeteries are already very regulated and that the Funeral Rule as written is simply inapplicable to cemeteries?

Dr. SHREVE. Well, I guess, in reality, it is inapplicable to cemeteries, and so I don't think they are covered by the same—

The CHAIRMAN. Well, then your point of view of whether or not they ought to be applicable?

Dr. SHREVE. They should be because every element of the industry should be subject to the same kind of rules so that all the players are playing on a field where they all have to obey the same set of rules.

The CHAIRMAN. Let me go on to another question. What is your organization's official stance on portability of pre-need agreements?

Dr. SHREVE. We encourage people to make pre-arrangements, but we are not encouraging people to pre-pay, and there is an awfully big difference.

The CHAIRMAN. So if they don't pre-pay, then your point is that there isn't need for portability?

Dr. SHREVE. Well, I don't know how much of an issue that really is. I don't know how many people that affects.

The CHAIRMAN. Can I ask you if your organization has developed some model laws that you made reference to for Senator Breaux, not having so much Federal regulation, maybe not less Federal regulation, but doing it more through model State statutes?

Dr. SHREVE. I think we could get some material to you on that score.

The CHAIRMAN. OK, we would like to have that.

Dr. SHREVE. And one other thing that I would like to mention is when people do violate the Funeral Rule, many times the FTC will let them make a payment to the Treasury in lieu of a fine and that keeps it all quiet. I think if you break the law, you should have the embarrassment of having to pay your fine publicly.

The CHAIRMAN. Ms. Lankford, did you ever work for the company or the funeral home involved in Ms. Carriere's case? Did you have firsthand knowledge of the company's practices and whether or not the pre-need salespeople were ever trained?

Ms. LANKFORD. Yes, I did. I worked for SCI, Service Corporation International, down in the St. Petersburg-Clearwater area for a very brief time, approximately about 9 months to a year. That was just about the beginning of them starting, or funeral homes starting the aggressive pre-need practices.

Were they trained at that time? I was on more of the at-need funeral service side. They weren't trained any more than we were on a training basis, given a little vocabulary and a pricing guide to go out and make the sale.

The CHAIRMAN. As a funeral director, do you sell pre-need agreements, and do you favor their use?

Ms. LANKFORD. Yes, sir, I sell them. And, no, sir, I don't favor their use. It is a catch-22 situation, as we were talking today. On elderly citizens that are on income or have to go under specific aid to be taken care of medically, I feel that this is something that is important. I do feel pre-need is a plus. I do feel that if it is done properly and the family is given all the information they need to make that viable decision, I feel that it is a good thing.

I have in the past year had the privilege of transferring three what they call pre-needs that were written through us with insurance. I called funeral homes in other areas of the United States. All three of them accepted the contract as we had written it for the price that it was written, with the exception of the third-party expenses which were not, of course, in our contract. We would not be servicing that contract, which was cemetery property.

The CHAIRMAN. I would like to thank all of our witnesses who testified today. I think the stories you told, while shocking and sad, will assist our committee greatly.

Senator BREAUX. Can I ask a few more questions before you close?

The CHAIRMAN. Yes, you sure can.

Senator BREAUX. I am looking at the GAO report, and maybe I can get some comment on this aspect. It says that the Federal Trade Commission in 1998, in their internal consumer complaint department, received 46,091 consumer complaints, 152 of which were on the subject of death care, 0.33 percent. FTC staff assessed these complaints and determined that 58 involved potential violations of the Funeral Rule.

The industry will say that indicates there is not really a problem out there; that if you have 46,000 complaints to the Federal Trade Commission and only 152 of them are related to the death care industry, it is really a small number. When the problems occur, they are serious and there are some very bad actors, but it is very, very insignificant.

GAO reports, in addition, along the lines of why people don't complain more and they suggest that, well, it is embarrassment. They don't know where to complain. They don't think that complaining does any good to some bureaucracy way off in Washington, DC.

So I guess I would like some comment on that. I mean, if the industry tells me, look, there are only 152 complaints out of 46,000, so why are you getting all excited about this, Dr. Shreve, what would your comment be?

Dr. SHREVE. Well, I think that very few people who have a real complaint about something are inclined to carry it as far as like Ms. Moore did. And I commend her for what she did, but I think she is atypical.

Senator BREAUX. Does AARP in their publications send out information on this issue to your members? I think it could be very helpful in letting people know what their rights are, so to speak, and what the rule is all about in terms that they would be able to understand, instead of some of the bureaucratic phraseology that we use here in Washington. Do you all educate your people, or try to?

Dr. SHREVE. We have a variety of publications that are available to people. We don't send every publication to every person because obviously that would be millions of each one of them.

Senator BREAUX. But in your newsletter? Don't you all do a national newsletter?

Dr. SHREVE. We have a magazine and a newsletter that go out several times a year, and in those from time to time there will be—well, in every one there are some consumer issues that are discussed.

Senator BREAUX. I will tell you, I can't think of one that would probably be more helpful than something like this.

Dr. SHREVE. You are right. Yes, you are right.

Senator BREAUX. Does anybody else have a comment? I mean, the comment would be that, look, there are so few complaints, it is not a big problem.

Father Wasielewski, and then Ms. Moore.

Father WASIELEWSKI. I guess, you know, if you look at the rule it says in there that it is against the law if you don't provide people with a price list with 16 items there. The next thing it says is you must give your prices over the phone. Next, it says no misrepresentation, which means you can't say that embalming is needed if it

is not, or a casket, or whatever. That is the end of the story on those things.

So I would suppose that maybe a lot of these complaints were not accepted because somebody is talking about the kind of pressure the guy put on me, or whatever, and it wasn't—

Senator BREAUX. Something directly related to the rule?

Father WASIELEWSKI. Yes, a misrepresentation of the rule.

Senator BREAUX. Ms. Moore.

Ms. MOORE. I think the biggest issue here is why people are not coming forward. No. 1, the after-care is the last thing you do for your loved ones, the very last thing. And once you have done it and it has gone all wrong, pricing, everything—like with us, the cemetery, the burial plots or whatever—it is over with, it is done. You have grieved, you are hurt, you lost that person. And then the very last thing that you did for that person you didn't do right. Who are you going to tell?

Senator BREAUX. That is very well said.

Ms. LANKFORD. Senator, if I may, I receive quite a few complaints in our firm about things and questions to ask during the outcome of a month, and the consumers are actually scared to submit. We have to file to Tallahassee to get a complaint form sent, and they are afraid to put their name on the bottom of it because they are afraid somebody is going to come after them and do something. And that is a terrible way to have to be in an industry such as this for them to not want to file a complaint.

We try and educate the consumer, and when we go out and do consumer awareness in the community, it is not for the purpose of pre-need with our company. Our company says these are the things that you need to be aware of, these are the questions you need to ask. Much like Senator Grassley's board over here, it is an information thing. We are death-defying society. They don't want to believe it, they don't want to ask the question, and they certainly don't want to have someone from the Oval Office or anywhere else come down and breathe down their neck.

They are scared to death to do the complaining, and that is probably the reason you have the low turn-out that you do. It is sad on that level, and you have about 52 different organizations that govern all the States. Every one of them have a different set of regulations that we are governed by, not just the Federal Trade Commission, but on a local level.

Senator BREAUX. Mr. Hankins.

Mr. HANKINS. If I could comment, too, Senator BreauX, what has been said, I think, is accurate, and I think GAO got it right, also. In Texas, for instance, you have to not only put your name on the complaint, you have to actually push it forward. You have to participate all along in the complaint process, and very few consumers want to do that, especially about something as personal to them as the death of a loved one.

And if I could go back for just one moment to an earlier question you asked, I think that while all the States regulate a little differently, there is one general statement that can be made about them, and that is that they are more focused at the State regulatory agencies on licensing and on the condition of the funeral home rather than on FTC regulations.

In Texas, for instance, and in most other States, I think they look to see if there is a general price list, but they are not really concerned with enforcing the FTC regulations. And the FTC, as I understand it, does not investigate complaints, so it does no good for a consumer to file a complaint with them.

Senator BREAUX. Well, I thank this whole panel. You have been very, very helpful and very informative.

Thank you, Mr. Chairman.

The CHAIRMAN. Well, thank you, Senator Breaux, for very thorough questioning on your part.

Senator BREAUX. Industry tomorrow?

The CHAIRMAN. Yes. We will, of course, be hearing from industry and regulators tomorrow. That is going to be at 2 o'clock, and I know you have been at the table for a long time and I am going to end the meeting now with a final thank you, but also as a reminder, if you wonder about the process you are involved in, I see at least a minimum of two things that you do by appearing: No. 1, to educate the consumer who is watching, or consumer groups, of the importance of education of the consumer on how the industry operates and how it should operate, and the minimum Federal regulation of informing the public about the cost and what you pay for and what your rights are; second, though, the extent to which there might be some need for a change in Federal regulation or Federal law or Congress' urging of States to do more. You obviously have helped us set the stage for that.

I want to remind committee members and anybody in the audience that tomorrow's hearing begins at 10 a.m. It is not an afternoon hearing. We hope to have it done by noon. Thank you all very much.

[Whereupon, at 4:01 p.m., the committee was adjourned.]

FUNERALS AND BURIALS: PROTECTING CONSUMERS FROM BAD PRACTICES

TUESDAY, APRIL 11, 2000

**U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, DC.**

The committee met, pursuant to notice, at 10:04 a.m., in room SD-106, Dirksen Senate Office Building, Hon. Charles E. Grassley (Chairman of the Committee) presiding.

Present: Senators Grassley and Breaux.

OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY, CHAIRMAN

The CHAIRMAN. I am Senator Chuck Grassley, Chairman of the Aging Committee. I welcome the large number of people we have with us this morning, even larger than yesterday, and we are glad to have more people in attendance, and particularly to thank our witnesses, many of whom probably sat through yesterday's hearing as well as participating in today's. We thank you for not only the time out of your schedule, but also the work that you have to do in putting together such testimony.

This, of course, is the second of 2 days of hearings on funeral-related industries. Yesterday, we heard from consumers and consumer advocates. We heard them discuss various concerns about these industries. Now, today we are here to hear from the industry and the Government, and when I say "the Government," specifically those agencies, Federal and State, that are involved in the supervision, regulation, and enforcement of rules and laws dealing with the funeral industry.

This committee appreciates the opportunity to hear the perspectives today as we heard the various perspectives yesterday. And also we look forward to an opportunity not only today but in the months to come, what steps can be taken to help the industry with greater following of the laws and regulations, as well as eliminating bad practices.

Yesterday, we heard a young woman describe many years of pain and anguish after she discovered that her grandparents' remains were violated allegedly by a sealed casket.

We heard from a woman from California who described in graphic details of finding mass graves in the cemetery where more than 30 of her relatives had been buried. To protect their memories, the lady from California told us yesterday of the forming of a foundation and taking control of the cemetery that the city did not want.

We heard from a third person about the Florida funeral industry, a director there who described the high-pressure sales tactics that she has observed certain funeral homes practice when selling pre-need agreements to the elderly. She described in detail about one 81-year-old woman prepaying \$132,000 for her funeral arrangements.

This committee asked the company involved to waive the confidentiality provision of the settlement so that we could understand more about what happened in this case. Since the company would not waive confidentiality, we discussed only those portions of the case that were in the public record, such as the complaint and the answers that were filed by the parties to the lawsuit.

Our committee also heard yesterday testimony of a former pre-need sales executive, Irwin Karp, who is serving out his sentence for the theft of funds. Mr. Karp's testimony was helpful in providing the committee with insight about how the State and Federal Governments might do a better job of protecting consumers.

In addition, the committee heard from several consumer advocates who discussed other examples, suggesting the need for improved government oversight over the funeral-related industries.

Before I introduce today's witnesses, I want to thank our ranking member, Senator Breaux of the State of Louisiana, again and again and again for his support not only throughout this investigation but throughout so many other important investigations and hearings that this committee has had over the 3 years that we have been working together in a cooperative spirit to accomplish the goals that the Senate set for the Special Committee on Aging.

I would now like to hear from Senator Breaux.

STATEMENT OF SENATOR JOHN BREAUX

Senator BREAUX. You are welcome, you are welcome, you are welcome.

Thank you very much, Mr. Chairman, for once again convening a hearing that is of great importance, which is in keeping with what this committee has tried to do in so many areas. As I said yesterday, with the hearings that we have had on Medicare fraud and abuse, with regard to Medicare problems in the nursing home industry and home health care and assisted living facilities and telemarketing problems targeting seniors, which the FTC is also very much involved in protecting against. And this is just a continuation of looking at different areas that affect particularly seniors in a very direct and oftentimes very emotional manner. So I think we do a good service in providing this information to our colleagues in order to determine what action, if any, is needed from a Federal standpoint.

I think what we heard yesterday was disturbing, and it clearly indicates that, like every other industry, there are some bad actors that are out there. The question is: How do we get rid of them? How do we protect the people against unscrupulous vendors of services in a very emotional area like what to do with our deceased loved ones?

I think in that case it is even probably more important that we make sure that rules and standards are followed because people are dealing with this industry at the most vulnerable time in their

lives. And so it is unique and it is special, and I think special attention needs to be provided.

I also would comment that I think the industry, quite frankly, has been very helpful in providing us information about how they work and even cases when it doesn't work very well. They have not been trying to sandbag their industry in the sense of trying to hide or cover up anything, but they have been very forthcoming with, I think, your staff and certainly with my staff, and we thank them for that.

I think in that sense we can agree that it is in everybody's interest to get rid of bad actors, and I am delighted we have the FTC here today to talk about the Funeral Rule and how it is being enforced and what, if anything, needs to be done, as well as hearing from what the States are doing, because this is still primarily an area of State regulation. And we don't, I think, need a Federal pre-emption of State rules. I was impressed with the fact that AARP said yesterday, that we need to make sure that we work with the States in a cooperative fashion. It is not a question of we know better than they. It is a question of working together to make sure that the public is well served, and hopefully the hearing today can answer some questions that were, in fact, raised yesterday.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Breaux.

Before I introduce you, my staff had told each of you to have a 5-minute testimony, but what I would like to do to be fair to everybody, since yesterday I was a little more liberal on that rule than normally I would be because I wanted to make sure that everybody had an opportunity to say what they wanted to say—now maybe in a couple instances yesterday I was a little too liberal. It tended to drag on and repeat. But I want to lend the same courtesy to each of you.

Would it be OK if I would ask you to go 7 or 8 minutes, and then if you do not have—if you want a little extra time, just tell me how much more at that point you think you need so we can keep things moving but yet not be unfair particularly to people representing the industry. I think it is fair that they have time to express their points of view.

Also, before I introduce you, I do have a constituent here, Mr. Jacobson from Pella, IA. He is president of the Iowa Funeral Directors Association, and I want to thank him because I held two hearings in my State during the month of December to get a feel of the situation in my own State before we decided to go with the hearings before the committee here in Washington. And the association in Iowa not only cooperated with our hearings, but they also served on panels to help inform our constituents in Iowa about the industry and also about cautions and about just general consumer information that everybody ought to have. So I want to thank Mr. Jacobson not just to himself but for the membership in Iowa for the cooperation of those hearings as well. So I won't introduce you a second time, but you are here now representing the National Funeral Directors Association in your capacity as president of the State Association.

I will go back to Eileen Harrington, Associate Director of Marketing Practices at the Federal Trade Commission, and then the sec-

ond witness, from California we have G.V. Ayers, chief of the Department of Consumer Affairs, Cemetery and Funeral Programs, and then my constituent, Mr. Jacobson, and then finally we have Paul Elvig representing the International Cemetery and Funeral Association.

So what I would like to do is if we could go in this order: Ms. Harrington, Mr. Ayers, Mr. Jacobson, and Mr. Elvig. And then we will ask questions when you are all done testifying. Please proceed.

**STATEMENT OF EILEEN HARRINGTON, ASSOCIATE DIRECTOR,
MARKETING PRACTICES, FEDERAL TRADE COMMISSION,
WASHINGTON, DC**

Ms. HARRINGTON. Thank you, and good morning, Mr. Chairman and Senator Breaux. I am Eileen Harrington. I am an Associate Director in the FTC's Bureau of Consumer Protection, and I am pleased to be here this morning to present the Commission's views on this very important matter of consumer concerns with the funeral services and cemetery industries. The Commission's full testimony has been submitted to the committee for its hearing record.

The CHAIRMAN. That reminds me that I should tell each of you, as you summarize your statements, your entire statement will be printed in the record as you submit it, and then the summary will also be included.

Proceed.

Ms. HARRINGTON. Thank you, Mr. Chairman.

The Federal Trade Commission has a longstanding concern for protecting consumers in connection with their shopping for funeral goods and services. From its investigation of the funeral services industry in the 1970's to issuance of the Funeral Rule in the early 1980's, and through over 15 years of enforcement of the rule and antitrust laws, the Commission has aligned itself with the interests of consumers. We welcome complaints and inquiries from consumers and industry members and urge those with complaints to call us at the FTC hotline, 1-877-FTC-HELP.

Our staff records and reviews each and every complaint that we receive from consumers on this and any other consumer protection issue.

The Federal Trade Commission's mission is to protect consumers from unfair methods of competition and unfair and deceptive acts or practices in the marketplace.

In addition to enforcing these core provisions that are found in the Federal Trade Commission Act, the Commission enforces 46 additional statutes and over 30 industry-specific trade regulation rules. For example, we enforce the Homeowner's Equity Protection Act, a subject of hearings before this committee about 18 months ago. And as Senator Breaux mentioned, the Commission's Telemarketing Sales Rule in the Federal consumer protection law for consumers with respect to telemarketing.

The Commission works to ensure that consumers benefit from a vigorously competitive marketplace. Fair competition among producers and truthful information in the hands of consumers brings the best products at the lowest prices for consumers, spurs efficiency and innovation, and strengthens the economy.

In the funeral industry, the Commission has used both its anti-trust and consumer protection authority to protect consumers. On the antitrust side, we have investigated potentially anti-competitive mergers and obtained consent orders requiring divestiture of properties. In 1999, for example, the Commission obtained a consent decree with the world's largest owner of funeral homes and cemeteries, SCI, requiring divestiture in 14 geographic areas. An important aspect in antitrust analysis of mergers in the funeral industry, however, is that markets are very localized, and, thus, a merger that involves properties in many markets may actually raise competition issues in only a few.

On the consumer protection side, the Funeral Rule is the Commission's primary enforcement tool, although we also make use of Section 5 of the Federal Trade Commission Act, which prohibits unfair and deceptive acts and practices.

The rule covers industry members that sell both funeral goods and funeral services to the public, and it applies both to pre-need and at-need transactions. Broadly speaking, the rule has three important sets of requirements; first, it requires that providers furnish consumers with detailed, itemized price information about the goods and services that they sell; second, the rule forbids providers from conditioning the purchase of any good or service upon the purchase of other goods or services, or tying and bundling; third, the rule prohibits certain other practices, including misrepresentations by sellers, embalming without consent, charging casket handling fees, and requiring the purchase of a casket in cases of direct cremation.

Taken together, the rule's requirements open the way for meaningful competition among providers because consumers may obtain price information to comparison shop, purchase caskets and other goods from third parties while still retaining services of a funeral director if they choose to do so, and may purchase only what they want.

Although these principles may be ones that we as consumers take for granted in a market economy, FTC investigations in the 1970's revealed that they were foreign concepts in the funeral services industry, and that is why the Commission issued its Funeral Rule in 1982. It became effective in 1984. It is why the Commission has fiercely defended its rule in litigation challenging the rule in Federal courts. And it is why the Commission has brought 70 Federal court enforcement actions since the issuance of the rule to enforce it.

The Commission's enforcement actions have imposed permanent injunctions on the operations of defendant funeral homes and required these homes to pay in the aggregate over \$1.8 million in civil penalties for their violations. In addition, since 1994, the Commission has conducted undercover test shopping of funeral homes, and with assistance from State and local consumer agencies as well as AARP volunteers, we have test-shopped over 1,000 of the approximately 23,000 funeral homes in the United States, and the map that is displayed on the easel indicates where that test shopping has occurred so far.

Around 100 of the homes test-shopped failed to provide itemized general price lists as required by the rule. Many of those homes

were given the option either to sign a consent decree and pay civil penalties for their violations or make payments to the treasury and enter into a 5-year remedial program involving mandatory training for all sales personnel in Funeral Rule compliance, legal review of the home's price lists and disclosure statements, and ongoing monitoring of the home's compliance procedures and practices.

This program, the Funeral Rule Offenders Program, complements our formal enforcement work and seeks to improve industry compliance with the rule. Our highest goal is industry compliance because when funeral providers comply with the rule, consumers are not victimized by the kinds of unscrupulous and injurious practices that the Commission heard of from yesterday's witnesses.

There is much more to do, however. The Commission staff is reviewing the Funeral Rule to determine whether it should be amended to explicitly cover cemeteries otherwise subject to the FTC's jurisdiction. Undercover test shopping continues both of homes that haven't been test-shopped previously and some that have. This year we will conduct at least a dozen undercover test-shopping sweeps in all parts of the United States.

In this and all consumer protection matters, consumer and business education are of primary importance. I have brought copies today of our latest funeral industry consumer education booklet. I also note that the committee and Senator Grassley are in the consumer education business with very good consumer tips on funerals and cemeteries that are posted on the committee's website.

In addition, some years ago the Commission sent very specific compliance guides to every single funeral home in the United States to make sure that they understand what is required of them under the law and how to comply.

All of our consumer and business education material is available at the FTC's website, ftc.gov. We are happy to send it at no cost to any consumer and business, and, again, consumers and businesses are urged to contact us at 1-877-FTC-HELP or to go directly to our website where we have an online complaint form that comes directly into our Consumer Response Center.

I want to thank you for inviting the Commission to provide its views and look forward to answering any questions that you may have for us, Senator. Thank you.

[The prepared statement of Ms. Harrington follows:]

PREPARED STATEMENT

OF THE FEDERAL TRADE COMMISSION

FOR THE SPECIAL COMMITTEE ON AGING,

UNITED STATES SENATE

April 11, 2000

Mr. Chairman and members of the Committee, I am Eileen Harrington, Associate Director for Marketing Practices in Federal Trade Commission's Bureau of Consumer Protection. On behalf of the Commission, I appreciate this opportunity to provide information to the Committee on the Commission's law enforcement activities regarding the funeral industry.¹

Congress has charged the Federal Trade Commission with protecting American consumers -- including consumers who find themselves in need of funeral goods or services -- from "unfair methods of competition" and "unfair or deceptive acts or practices" in the marketplace. The cornerstone of the Commission's statutory authority in fulfilling this mandate is the Federal Trade Commission Act.²

In enforcing the FTC Act, the agency's mission is to ensure that consumers benefit from a vigorously competitive marketplace. The Commission does not seek to supplant competition with regulation. The Commission is, first and foremost, a law enforcement agency. The Commission's work is rooted in a belief that free markets work -- that competition among producers and truthful information in the hands of consumers brings the best products at the lowest prices for consumers, spurs efficiency and innovation, and strengthens the economy.

¹ The views expressed in this statement represent the views of the Commission. My responses to any questions you may have are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

² 15 U.S.C. § 45(a). The Commission also has responsibilities under 46 additional statutes, *e.g.*, the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, which establishes important privacy protections for consumers' sensitive financial information; the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.*, which mandates disclosures of credit terms; and the Fair Credit Billing Act, 15 U.S.C. §§ 1666 *et seq.*, which provides for the correction of billing errors on credit accounts. The Commission also enforces over 30 rules governing specific industries and practices, *e.g.*, the Used Car Rule, 16 C.F.R. Part 455, which requires used car dealers to disclose warranty terms via a window sticker; the Franchise Rule, 16 C.F.R. Part 436, which requires the provision of information to prospective franchisees; and the Telemarketing Sales Rule, 16 C.F.R. Part 310, which defines and prohibits deceptive telemarketing practices and other abusive telemarketing practices.

The Commission promotes healthy competition in the marketplace through both its competition and consumer protection missions. First, for consumers to have a choice of products and services at competitive prices and quality, the marketplace must be free from anticompetitive business practices. Thus, the Commission's antitrust mission seeks to prohibit anticompetitive mergers or other anticompetitive business practices without interfering with the legitimate activities of businesses.

Second, for competition to thrive, curbing deception and fraud is critical. Through its consumer protection activities, the Commission seeks to ensure that the information companies provide to consumers is accurate, not false or misleading. The Commission's primary activity in pursuing its consumer protection mission as to the funeral industry is the enforcement of the Funeral Industry Practices Trade Regulation Rule, 16 C.F.R. Part 453, ("Funeral Rule").

Antitrust Enforcement in the Funeral Industry

The Commission is concerned about activities in the funeral industry that may lessen competition and result in noncompetitive prices or lower quality of services for consumers. Conduct or transactions that raise antitrust concerns are anticompetitive agreements among competitors, attempts to monopolize a market, and mergers and acquisitions that threaten a substantial lessening of competition. The Commission's staff is constantly on the look-out for such activities, and they work closely with state attorneys general in their monitoring and enforcement efforts.

In recent years, the principal antitrust enforcement efforts in the funeral industry have involved potentially anticompetitive mergers and acquisitions. These cases generally are resolved through consent orders that require the acquiring firm to divest one or more acquired properties in

order to prevent a lessening of competition. In 1999, for example, the FTC secured a consent decree with Service Corporation International (SCI), the largest owner of funeral homes and cemeteries in the world, to divest funeral service and cemetery properties in 14 local geographic markets in connection with its acquisition of Equity Corporation International, the fourth largest funeral home and cemetery company in the United States.³ The complaint alleged that the acquisition would raise significant competitive concerns in six local markets for funeral services, with total annual sales of approximately \$36.6 million for funeral services, and in eight local markets for cemetery services, with total annual sales of approximately \$47.3 million.

An important aspect of the antitrust analysis of mergers in this industry is that the markets for funeral and cemetery services are very localized. This means that, from an antitrust perspective, a merger or acquisition raises antitrust concerns only to the extent that the transaction will reduce the number of firms in a particular geographic area to such a level that the remaining firm or firms could raise prices or otherwise adversely affect consumers. An acquisition that involves funeral homes or cemeteries in many cities may raise antitrust concerns in only a few, or in none. Even when relatively few firms remain, competition will not necessarily be lessened, because other factors, such as the potential for new firms to enter the market, may keep the market competitive. The Commission remains vigilant for the relatively few transactions that raise serious concerns.

³ *Service Corporation International*, FTC Docket No. C-3869 (Consent Order, May 4, 1999). See also *The Loewen Group Inc.*, FTC Docket Nos. C-3677 and C-3678 (Consent Orders, August 2, 1996) (requiring divestiture of funeral homes in Cameron County, Texas and in Castlewood, Virginia); *Service Corporation Int'l.*, FTC Docket No. C-3646 (Consent Order, March 21, 1996) (requiring divestiture of seven properties, located in Amarillo, Texas, and Brevard and Lee counties, Florida); *Service Corporation Int'l.*, FTC Docket No. C-3579 (Consent Order, May 15, 1995) (requiring divestiture of two funeral homes and a cemetery in Medford, Oregon).

Consumer Protection Enforcement in the Funeral Industry

The Funeral Rule

The Funeral Rule was adopted by the Commission in 1982 and became fully effective in 1984. It has the force and effect of law, and it may be enforced through civil penalty actions in the federal courts. The FTC Act authorizes courts to impose civil penalties of not more than \$11,000 per violation for failure to comply. The Rule covers funeral providers -- that is, industry members that sell both funeral goods and funeral services to the public.⁴ Although most funeral providers are funeral homes, other businesses, such as cemeteries and crematories, can also be "funeral providers" within the coverage of the Rule if they market both funeral goods and services. Furthermore, the Rule's requirements apply to both pre-need and at-need funeral arrangements; in pre-need situations, funeral providers must comply with all Rule requirements at the time funeral arrangements are pre-planned.⁵

The Rule requires funeral providers to furnish consumers with three basic types of information, which, taken together, enable consumers to select the goods and services they want and to comparison shop for them. First, the Rule ensures that consumers receive itemized price information for the various goods and services that make up a funeral. If a consumer inquires

⁴ "Funeral Goods" are the goods which are sold or offered for sale directly to the public for use in connection with funeral services. 16 C.F.R. § 453.1(g). "Funeral Services" are any services which may be used to: (1) care for and prepare deceased human bodies for burial, cremation or other final disposition; and (2) arrange, supervise or conduct the funeral ceremony of the final disposition of deceased human bodies. 16 C.F.R. § 453.1(i).

⁵ Federal courts have imposed civil penalties in two consent decrees between pre-need funeral providers and the Department of Justice, acting on the Commission's behalf, settling charges that the defendants failed to provide pre-need consumers with price lists and itemized statements of funeral goods and services selected, in violation of the Rule. *U.S. v. Mission Plans, Inc.*, Civil Action No. H94-3053 (S.D. Tex., entered September 13, 1994, \$20,000 civil penalty); *U.S. v. Restland Funeral Home, Inc., et al.*, Civil Action No. 3:91CV2576-G (N.D. Tex., entered September 19, 1996, \$121,600 civil penalty).

about price over the telephone, funeral providers must give accurate price and other reasonable information about the goods and services they offer. If a consumer visits a funeral home in person, the Rule requires that the funeral director provide the consumer with a general price list that itemizes prices of each of the funeral goods and services offered by the funeral home. The Rule also requires funeral providers to show consumers a casket price list and an outer burial container price list, if the home's offerings of those items are not itemized on the general price list. At the beginning of any discussion of funeral arrangements, funeral directors must provide a copy of the general price list for the consumer to keep, and must show the casket price list and outer burial container price list before showing the consumer those items. These requirements apply for both at-need and pre-need situations when funeral arrangements are being made.

The second type of information the Rule requires is a disclosure on the general price list that a consumer may choose only the items he or she desires. Thus, the Rule empowers consumers with the knowledge that they can pick and choose what they want to buy from the itemized general price list. Consumers do not have to purchase a package funeral at a pre-determined price that may include items or services that the consumer does not want but must pay for in order to get the other items in the package. To ensure that consumers' choices are honored by the funeral director, once funeral arrangements are made, funeral directors must give consumers an itemized statement of goods and services selected, listing each good or service selected along with the price for each item and the total cost of arrangements made.

The third type of information the Rule requires concerns disclosures of certain legal requirements and options available to the consumer. For example, the price list must disclose that in most cases embalming is not required by law. Similarly, the price list must disclose that one

may use alternative containers for direct cremations, rather than incurring the much greater expense of purchasing a casket.

In addition to ensuring that consumers receive these three basic types of information, the Rule protects consumers by prohibiting specific practices, such as misrepresenting that embalming is legally required or necessary (when it is not), misrepresenting that a casket is required for direct cremation, misrepresenting that any funeral goods or services have protective or preservative abilities when this is not the case, embalming without consent, or requiring a consumer to purchase any funeral good or service as a condition of purchasing any other good or service. In sum, the information required by the Rule seeks to enable consumers to make informed purchasing decisions at a time of extraordinary stress.

Regulatory Review and Amendment of the Rule

When the Commission adopted the Rule in 1982, it included a provision that required initiation of a rulemaking amendment proceeding pursuant to Section 18 of the FTC Act no later than four years after its 1984 effective date to determine whether the rule should be amended or terminated. 16 C.F.R. § 453.10 (1982). Accordingly, in December 1987 the Commission published an Advance Notice of Proposed Rulemaking to initiate a Rule amendment proceeding.⁶

⁶ 52 Fed. Reg. 46,706 (Dec. 9, 1987). The Notice of Proposed Rulemaking was published the following May. 53 Fed. Reg. 19,864 (May 31, 1988).

This proceeding ultimately resulted in the adoption of amendments to the Funeral Rule in 1994.⁷ The amended Rule went into effect on July 19, 1994.⁸

A second regulatory review of the Funeral Rule is now underway, initiated with an announcement in the Federal Register on May 5, 1999.⁹ The Funeral Rule review is part of a continuous, comprehensive program whereby the Commission subjects each of its regulations and guides to formal scrutiny, with public comment, at least every ten years to ascertain whether the rule is still necessary and whether amendments could increase the rule's effectiveness or lessen its compliance burden on industry.¹⁰ The Federal Register Notice initiating the Funeral Rule review solicited written comments, and invited interested parties to apply to participate in a Public

⁷ The Commission determined that the original Rule was sound and still necessary. The Commission therefore retained the core provisions that required itemization, price, and other material disclosures and that prohibited misrepresentations and other specific deceptive practices. With some "fine tuning," the amended Rule closely tracks the original Rule. For example, the amended Rule retained the requirement for providers to give price information by telephone to all who request it, but eliminated the original Rule's requirement for funeral providers to volunteer to callers that price information is available by telephone. Similarly, the amended Rule makes clear that casket handling fees are prohibited. Thus, a provider cannot impose fees upon consumers who elect to purchase a casket from another seller. As another example, the amended Rule also clarifies that, if the funeral provider merely removes the deceased for transportation to the funeral home and, at that time, only requests authorization to embalm, the funeral provider is not required to offer a general price list. 59 Fed. Reg. 1592, Jan. 11, 1994.

⁸ In October 1994, the Third Circuit upheld the amended Rule in a challenge filed by industry members. *Pennsylvania Funeral Directors Ass'n, Inc. v. FTC*, 41 F.3d 81 (3d Cir. 1994).

⁹ 64 Fed. Reg. 24,250.

¹⁰ The Funeral Rule was promulgated before the Commission instituted (in 1992) its program of periodic regulatory review for all its rules and guides. This is the reason that Section 453.10 of the Rule as originally promulgated cast its requirement for reassessment of the Rule in terms of an amendment proceeding rather than a regulatory review proceeding. A regulatory review is not a rule amendment proceeding and does not entail the numerous time-consuming steps required for rule amendment proceedings by Section 18 of the FTC Act, 15 U.S.C. § 57a. Regulatory review sometimes results in initiation of a rule amendment proceeding, as in the case of the Franchise Rule, 16 C.F.R. Part 436, the Care Labeling Rule, 16 C.F.R. Part 423 and the R-Value Rule, 16 C.F.R. Part 460. In other instances, a regulatory review proceeding has resulted in a decision to retain the rule unchanged, with no ensuing amendment proceeding necessary -- as in the case of the Credit Practices Rule, 16 C.F.R. Part 444.

Workshop Conference, which was subsequently held on November 18, 1999. One suggestion raised in the rule review is to extend the Rule to cover cemeteries or other providers not currently covered. The staff of the Commission is currently reviewing and analyzing the comments and the transcript of the workshop in order to prepare a recommendation to the Commission as to whether the Funeral Rule should be amended. The Commission expects to have a staff recommendation regarding the Rule in early spring.

One possible outcome of the regulatory review described above is that the Commission may determine to initiate a process to amend the Rule. The process would be conducted pursuant to Section 18 of the FTC Act, 15 U.S.C. § 57a. Section 18 mandates multiple steps and provides numerous opportunities for public comment and participation by stakeholders.

Funeral Rule Enforcement

In connection with the first review that ultimately resulted in amendment of the Rule, the Commission's staff confronted the sobering fact that even though the Funeral Rule had been in effect for more than a decade, a low level of industry compliance prevailed. A Commission-sponsored 1987 study and a 1988 study conducted by the Gallup organization for the AARP indicated that at that time funeral providers' compliance with the Rule's core requirement -- *i.e.*, to give consumers an itemized price list at the beginning of the arrangements discussion -- may have been as low as 23 percent.¹¹ These study results raised questions about the effectiveness of the enforcement approach followed up until then -- a reactive strategy that was based upon complaints from consumers or competitors. This approach entailed exhaustive investigation and attempts to

¹¹ See *Federal Trade Commission Bureau of Economics Staff Report - An Analysis of the Funeral Rule Using Consumer Survey Data on the Purchase of Funeral Goods and Services* (February 1989) at p. 20.

achieve settlement of charges of law violations revealed by the investigation through consent negotiations prior to filing a complaint to initiate an enforcement action.¹²

Seeking to increase industry compliance with the Rule, the Commission's staff adopted a new approach that combined increased industry education and stepped-up enforcement. To improve industry education, the Commission's staff prepared and distributed concise, easy-to-understand Compliance Guidelines to help funeral providers comply with the amended Rule. A copy of the Guidelines was mailed to virtually every industry member throughout the nation in June 1994.

To step up our enforcement effort, in late 1994 the Commission's staff initiated an industry "sweeps" approach -- simultaneous law enforcement actions targeting numerous industry members in a particular region, state, or city. Sweeps cases are investigated and prosecuted cooperatively by the Commission staff and the state Attorneys General. The sweeps methodology was designed to boost the overall compliance level with the Funeral Rule's core requirements: giving consumers itemized price lists.

The sweeps are based on "test-shopping" of large numbers of funeral homes in a given geographical area. The test-shopping is performed by investigators from the FTC and our counterparts at the state and local level, and in some instances, AARP volunteers. These test shoppers pose as potential customers. A cluster of FTC and/or state enforcement actions in a given geographical area are filed and announced after conducting the investigative test-shopping stage of each sweep.

¹² Virtually all enforcement actions have been consent decrees negotiated prior to the filing of a complaint. One exception is *U.S. v. Restland Funeral Home, Inc., et al.*, Civil Action No. 3:91CV2576-G. (N.D. Tex., 1996), which was settled after the Department of Justice, on behalf of the Commission, filed a complaint and pursued the litigation for some time.

Within the first year of implementing the sweeps strategy in 1994, the Commission's staff, with the assistance of the Tennessee, Mississippi and Delaware Attorneys General, conducted four sweeps, one in each of those states, plus a pilot sweep conducted by FTC staff alone in Florida. The four initial sweeps, involving test shoppings of 89 funeral homes, resulted in 20 FTC enforcement actions¹³ -- nearly half as many as were brought in the previous decade since the Rule went into effect. The sweeps indicated better compliance with the Rule's core provisions among the funeral providers test shopped than was indicated by the surveys performed in the late 80's; the compliance rate of homes shopped ranged from 60 to 80 percent from sweep to sweep.

Enforcement actions arising from the sweeps, like almost all of those brought prior to implementation of the sweeps methodology, were resolved before filing a complaint through consent decrees. Nearly all of the sweeps consent decrees included a civil penalty commensurate with the alleged law violations committed by each funeral home. The deterrent effect of the sweeps, however, derives not only from the amount of the civil penalties in each individual case, but also from the much greater likelihood that non-compliance will be detected.¹⁴

¹³ As a result of the Tennessee sweep, the State of Tennessee also brought four additional actions of its own.

¹⁴ The FTC Act provides for the imposition of civil penalties of up to \$11,000 for each violation of the Funeral Rule or any other FTC Trade Regulation Rule. 15 U.S.C. 45(m)(1)(A). Civil penalties in non-sweeps Funeral Rule cases have ranged from \$10,000 to \$100,000, with the average at about \$30,000. In calculating the civil penalty in each case, a violator's ability to pay is one of the statutory factors that a court must consider in imposing a civil penalty. 15 U.S.C. 45(m)(1)(C). Other factors that must be considered are the "degree of culpability, history of prior such conduct, effect on ability to continue to do business, and such other matters as justice may require." *Id.* Thus, the range and average of penalties necessarily reflect the fact that historically the industry has been composed largely of small businesses. Because the sweeps investigations are streamlined, focusing upon only violations of the "core" Rule provisions, the civil penalties in sweeps cases have been somewhat lower (\$1,000 to \$35,000) than in conventional cases that entailed a more exhaustive investigation documenting a greater number and range of alleged law violations.

Industry Self-Regulation

The early sweeps highlighted two points. First, it appeared that compliance had increased since initiation of the new enforcement approach, the compliance rate was still not sufficiently high among those funeral providers shopped. Second, the new, more aggressive enforcement approach prompted a new awareness on the part of the funeral industry of the need for a more direct and appropriate response. Thus, in September 1995, the National Funeral Directors Association (NFDA) submitted a proposal to the Commission, which the Commission subsequently approved and implemented, for an industry self-certification and training program designed to increase Rule compliance. NFDA's action represented a turn of events in the Commission's relationship with the funeral services industry. Ever since the inception, back in the mid-1970's, of the proposal that the FTC regulate the funeral industry, the NFDA had consistently opposed the Commission at every step, both in rulemaking proceedings and litigation,¹⁵ and did little or nothing to assist the Commission to promote compliance with the Funeral Rule. NFDA's action in advancing its certification and training proposal represented a meaningful commitment to self-regulation that promised to do more to benefit consumers than would continued reliance only on case-by-case enforcement.

The chief component of the NFDA-sponsored program as submitted to and approved by the Commission was the Funeral Rule Offenders Program ("FROP"),¹⁶ which offers a

¹⁵ NFDA joined with the Pennsylvania Funeral Directors Association in challenging the amendments to the Funeral Rule adopted on January 11, 1994. *Pennsylvania Funeral Directors Inc. v. FTC*, 41 F.3d 81 (3d Cir. 1994).

¹⁶ A second component of NFDA's industry self-certification and training program is the Compliance Assurance Program, or "CAP." (This was initially called the Funeral Industry Rule Compliance Assurance Program - "FIRCAP"). CAP is a voluntary program of compliance review and training, for which the Commission serves solely as an advisor. According to NFDA, any funeral home.

non-litigation alternative for correcting "core" Funeral Rule violations -- where test-shopping reveals that funeral homes have failed to provide the price lists required by the Rule. FROP is designed to encompass only violations of these core Rule provisions, and the Commission in its sole discretion may choose not to offer the FROP alternative to a particular provider. Violations of other Rule provisions, such as embalming without consent or imposing illegal tying arrangements, are outside the scope of FROP, to be addressed through conventional Commission law enforcement procedures.

If an initial test shop reveals that a funeral provider failed to comply with one or more of the core requirements, a second test shop is conducted. When two separate test shops show that a funeral provider failed to comply, the FTC may give the provider, whether or not a member of NFDA, the choice of a conventional investigation and potential law enforcement action resulting in a federal court order and payment of a civil penalty, or participation in FROP. Violators choosing to enroll in FROP make payments to the U.S. Treasury equal to 0.8% of average annual gross sales, which is generally less than the amount that the Commission would seek as a civil penalty. FROP participants also undergo compliance review by NFDA counsel, and schedule NFDA-led training and competency testing on Rule compliance for all their employees, in both pre-need and at-need situations. The NFDA, which collects a fee from FROP participants for

including a former FROP participant that has successfully completed that program, is eligible to join CAP, regardless of whether it is a member of NFDA. CAP is designed to encourage industry compliance through continuing training by the NFDA. Participants in CAP certify to NFDA that all licensed funeral directors employed by the participant have completed NFDA's comprehensive Rule training program. Participants also certify that they have adopted a written policy, distributed to all licensed personnel, regarding distribution of price lists and information to consumers. Participation in CAP may become an asset for funeral homes in marketing their services to consumers. CAP guidelines, however, expressly forbid any reference to the Commission in such marketing efforts.

administering the program,¹⁷ has undertaken to keep records on homes that are enrolled in the FROP program and to make these available for review by the Commission's staff. Violators remain in the FROP program for five years and certify completion of the FROP requirements to the NFDA. The Commission periodically announces the number of referrals to FROP in a quarterly press release, but since no formal legal action is taken, no individual funeral home is identified. Of course, this information is available under the Freedom of Information Act.

The incentives for funeral homes to participate in FROP, rather than sustain a formal enforcement action by the Commission, include: (1) expedited informal resolution, resulting in reduced legal fees; (2) in lieu of a civil penalty, a payment to the Treasury that may be lower than a civil penalty resulting from an enforcement action; (3) certainty of outcome; and (4) less public exposure. As a deterrent from violating the Rule, FROP includes payments to the Treasury that are substantial enough to be treated as more than a mere cost of doing business, as well as five years of compliance training and monitoring.

FROP has enabled the Commission to achieve better compliance with the Funeral Rule while expending fewer resources. The Commission's history of Funeral Rule enforcement demonstrates that the process of a full investigation, consent negotiations, referral of both settled and unsettled complaints to the Department of Justice,¹⁸ litigation where required, collection of civil penalties, and monitoring of order compliance demands a high level of resources, limiting the

¹⁷ Currently NFDA charges a flat fee of \$1,000 upon entry into the program, and an annual \$200 renewal fee thereafter.

¹⁸ Under Section 16 of the FTC Act, the Commission is required to refer to the Department of Justice for filing and litigation any law enforcement action involving imposition of any civil penalty for violation of a Trade Regulation Rule. If the Department of Justice does not act on the referral within 45 days, the Commission is authorized to file and litigate the matter on its own behalf. 15 U.S.C. § 56.

number of enforcement actions the Commission can undertake using a conventional approach. FROP's benefits to the public include the lower-cost resolution of basic Rule cases; substantial involvement of an industry partner in bringing about industry compliance; greater emphasis on educating rather than penalizing the mostly small-businesses covered by the Rule; and the likelihood of increased compliance by industry members with the Funeral Rule.

Since implementation of the FROP-oriented sweeps program, the Commission and its partners have test shopped more than 1000 homes in 37 sweeps conducted across the country. As a result, 121 homes found to be non-compliant have opted to enter the FROP program.

The Commission is cautiously optimistic about the success to date of the FROP program. Nevertheless, we seek ways to improve this evolving program as part of our overall effort to protect consumers in their dealings with the death care industry. Responding in part to constructive criticism of the GAO,¹⁹ the Commission's staff has revised the written procedures used to guide the conduct of sweeps to include detailed instructions on record keeping. Revised procedures for Rule enforcement sweeps and FROP also include an improved two-tiered review of the file on each provider shopped: initial review by the coordinator of each individual sweep, and final review by the Commission's FROP coordinator. This review process should include appropriate emphasis on review of price lists to ensure they include required disclosures, that the Commission takes appropriate action in every instance, that there is consistency throughout all the Commission's sweeps, and that both the results of the test shopping and the reasons for any action taken or not taken are clearly and completely memorialized.

¹⁹ *Death Care Consumer Protection: Complaints and State Laws Vary, and FTC Could Better Manage the Funeral Rule* (GAO/GGD-99-156), released by GAO on October 21, 1999.

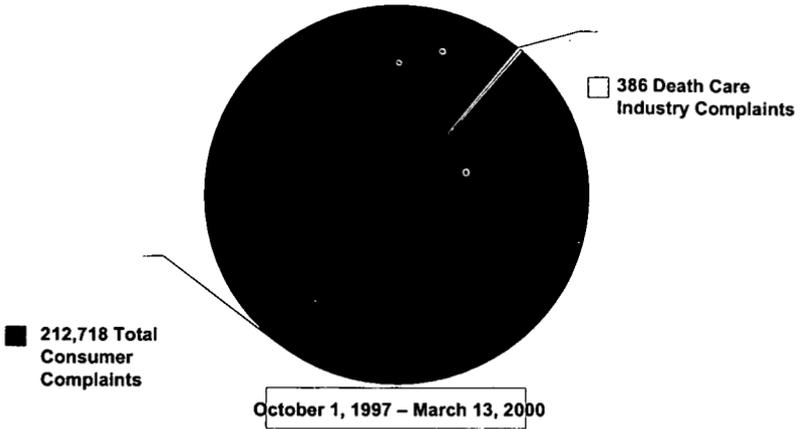
In addition, the Commission's staff recently performed an on-site assessment of NFDA's administration of the FROP program. As a result of this review, Commission staff has suggested several improvements to the program that could increase its efficiency and effectiveness. For example, staff recommended to NFDA that no more than 30 days elapse between enrollment in FROP and conduct of the first training for the enrollee. Similarly, staff recommended certain improvements in tracking enrollees' progress through the FROP process to ensure that all enrollees meet their requirements in a timely fashion. Also, we are selectively test shopping former FROP enrollees to determine whether the program has been successful in achieving a permanent improvement in compliance by individual homes. FROP enrollees found not to be in compliance will be subject to traditional investigation and law enforcement action.

Finally, to complement the FROP-oriented sweeps program, which has been the primary thrust of the Commission's efforts in this area in recent years, the Commission staff recently has stepped up its efforts to identify appropriate targets for conventional investigations and law enforcement actions. Several non-public investigations are currently underway. By implementing FROP, while continuing to maintain some traditional enforcement presence, we can encourage greater compliance and thus achieve greater protection for consumers.

Thank you again for this opportunity to describe for the Committee the Commission's law enforcement efforts to promote competition and protect consumers in the funeral industry. The Commission will be pleased to provide any further information that may be of assistance to the Committee.

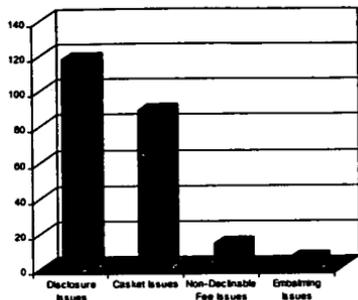
FEDERAL TRADE COMMISSION

Death Care Industry Complaints as a Percentage of Total Consumer Complaints

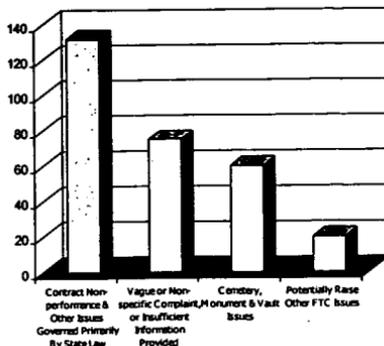


FEDERAL TRADE COMMISSION

386 Death Care Industry Complaints*



194 Complaints Mention Issues That Touch on the Funeral Rule



245 Complaints Mention Issues That Do Not Touch on the Funeral Rule

October 1, 1997 – March 13, 2000

*Some complaints mention more than one issue; some include both Funeral Rule and non-Funeral Rule issues.

The CHAIRMAN. Thank you, Ms. Harrington.
Now, Mr. Ayers.

STATEMENT OF G.V. AYERS, CHIEF, CEMETERY AND FUNERAL BUREAU, DEPARTMENT OF CONSUMER AFFAIRS, STATE OF CALIFORNIA, SACRAMENTO, CA

Mr. AYERS. Thank you, Senator. I am G.V. Ayers. I am chief of the Cemetery and Funeral Bureau for the State of California. We used to be called "programs" but now we are the "bureau." Senator Breaux, thank you as well.

You have asked me today to speak concerning funeral and burial and pre-need practices in the State of California. In California, the some 225,000 deaths per year represent approximately 9.6 percent of all the deaths in the United States, and at some point, virtually every one of those deaths are handled by a licensee, one or more licensees of the Cemetery and Funeral Bureau. California is somewhat unique in that we regulate both sides of the industry, both funeral and cemetery, in one single regulatory entity.

You have asked me to describe today how these two industries came to be regulated by one agency and, second, the responsibilities and jurisdiction of that bureau; third, how States can better regulate these industries, and also how consumer awareness and protection can be improved.

First of all, how the two industries came to be regulated by the Cemetery and Funeral Bureau. In 1993, the California Legislature took a very close view at the California Cemetery Board and the California Board of Funeral Directors and Embalmers. At that time the semi-autonomous regulatory agencies came under great scrutiny, and the legislature held hearings in which these two separate boards were reviewed with a view toward improving their efficiency, eliminating duplicative functions, and eliminating regulatory agencies which no longer served the public's need.

As a result of those hearings, the legislative report of that committee found that the two boards' investigative and enforcement activities were ineffective and non-existent and recommended that the licensure of the death care industry be transferred to a bureau under the Department of Consumer Affairs.

The following year, in 1994, reform legislation was introduced that proposed to eliminate the two boards and transfer them, as stated, to a bureau under the Department of Consumer Affairs. That bill was lobbied heavily by both industries and the boards, and as a result, the legislation died on the last night of the legislative session of that year.

The next year, 1995, agreement was reached with the industry on legislation which would merge the two boards into a single board under the Department of Consumer Affairs. However, that legislation was derailed by the scandals in 1995 and what was the discovery in southern California of what appeared to be serious crimes in the cemetery industry, as we heard testimony from Ms. Moore yesterday concerning Paradise Memorial Park, Lincoln Cemetery, Hollywood Memorial Park, and also Sunnyside Cemetery. So, therefore, urgency legislation was enacted which transferred both regulatory programs to the Department of Consumer Affairs. The department consolidated both of those functions into the Cemetery

and Funeral Programs, and since January 1996, that is the way that it has been regulated in the State of California.

As recently as January of this year, the name was changed from "program" to "bureau," and with a greater commitment by the administration to consolidate the enforcement, licensing, mediation, and all regulatory functions under the bureau chief in the Department of Consumer Affairs.

Now, concerning how we regulate and concerning the description of our responsibilities and jurisdiction, the Cemetery and Funeral Bureau regulates nearly every aspect of the licensed cemetery and funeral industries in the State of California. The bureau licenses and regulates some 890 funeral establishments, 190 cemeteries, 170 crematories. The bureau individually licenses approximately 2,000 funeral directors, 3,400 embalmers, 1,300 apprentice embalmers, 250 cemetery brokers, 2,000-plus cemetery salespersons, and 200 cremated remains disposers. The bureau oversees funeral pre-need and cemetery endowment care funds and special care trust funds. The bureau does not regulate insurance-based funeral pre-needs, nor does it regulate the over 1,200 religious, fraternal, or public cemeteries.

And I might state that California does not enforce the Federal Funeral Rule. That is not our jurisdiction. California law does somewhat mirror the Federal Funeral Rule in many aspects, in some aspects, but not exactly; so, therefore, some distinctions there.

Concerning complaints that we face—and I speak of fiscal year 1998–99, which is the last year that we have our full tally of complaints available—in that year the bureau received 558 complaints; 374 dealt with the funeral industry, 184 dealt with cemeteries. And although complaints can be mediated between disputing parties, those that appeared to be significant or appeared to be violations of law, they are referred to our Enforcement Section for possible investigation and disciplinary action.

In 1998–99, the bureau conducted 376 investigations and inspected 472 businesses for compliance, issued 242 warning and violation letters, and issued 104 citations. The bureau takes administrative action through the State Attorney General's Office and works with the local district attorneys in criminal action. From 1996 to 1998, the bureau has revoked 19 licenses and placed 26 licenses on probation.

The bureau conducts surprise inspections of about 200 of California's 890 funeral establishments each year. The bureau has oversight of funeral pre-need trust funds and of cemetery and endowment care and special care trust funds, and licensees file annual reports with the bureau, and the bureau may audit those trust funds to ensure compliance with the respective laws.

Since 1996, bureau audits of cemetery trust funds have identified some \$4.2 million in trust fund violations. The bureau has additionally participated in actions resulting in six criminal convictions in the cemetery industry, and the California Board of Accountancy has taken disciplinary action against one CPA for actions identified by bureau auditors.

The review of annual cemetery trust reports and licensing applications has also resulted in another \$1.3 million being repaid to trust funds in the cemetery industry.

When there is cause to believe the endowment care trust funds are in danger or can be lost, the bureau has authority to take possession of those funds in a conservatorship of those funds.

On the funeral side, in 1999, the bureau audited a Los Angeles funeral establishment to restore more than \$1.6 million to consumer pre-need trust accounts. The owner of that establishment or the former owner of that establishment was previously sentenced to 2 years in prison, and his co-conspirator received a 1-year sentence as well.

Crematories are separately licensed by the bureau; however, a cemetery may operate a crematory under its certificate of authority. And how that breaks down is like this: There are approximately 74 separately licensed crematories, and approximately 98 operate under a cemetery license under a certification of authority.

I would say just a word concerning the testimony of Mr. Irwin Karp yesterday. Mr. Karp's illegal activities took place under the former Board of Funeral Directors and Embalmers. At that time, the board did not have the money to go after him, and in 1995, he surrendered his license, his funeral establishment license to the board, and was going to repay the money. However, he never did that. When the Ventura County district attorney prosecuted Mr. Karp criminally, the bureau field representative educated the D.A. on pre-need law and appeared in court and testified and provided essential testimony at the trial.

A number of the issues that Mr. Karp experienced, a number of the laws have changed in that regard since the time Mr. Karp had his heyday. In 1997, funeral establishments have to have licensed managers, and that is since 1997 to the present day. Since 1997, at-need salespersons must be trained and demonstrate a knowledge of Federal and State funeral laws. However, pre-need salespersons are not required to be otherwise trained or licensed.

Crematories must have body identification systems, and constructive delivery since 1995, as described by Mr. Karp, that is now not allowed.

In addition, the Neptune Society of Los Angeles and the Neptune Society of Santa Barbara, where Mr. Karp worked during the time of his heyday, in 1997, those establishments were placed on probation for trust fund violations and other violations, and in 1998, the bureau shut down those establishments for other violations, and they were required to be sold to new owners and independent owners at that time.

How can other States better regulate these industries? Well, because death ultimately touches us all, a State's regulatory scheme should be structured to assure protection from consumer fraud and deceitful business practices.

What we have found in California is that oftentimes what seems to be a funeral complaint can in reality be a crematory or a cemetery complaint. And, conversely, what oftentimes appears even to the bureau to be a cemetery or crematory complaint at first can sometimes be a funeral home complaint.

Now, when you regulate by separate entities, that can obscure regulatory help for the consumer, and for the bureau oftentimes, or for the regulatory agencies, sometimes it can result in complaints not being addressed at all.

A single regulator seems to make much sense in other regulatory activities. In looking at funeral homes and crematories by the same regulatory eye or funeral homes and cemeteries by the same regulatory eye, we believe great efficiencies can be found.

In overseeing trust funds, both funeral and cemetery trust funds, if you have problems in one area, you are likely to have problems in other areas as well.

Similarly, many of the significant cases that we found probably would not or could not have occurred had these two industries been pursued or regulated by two separate regulatory boards, such as, as we said, in 1998 the Neptune Society case. That was found at a crematory inspection, first of all, the cemetery side.

In July 1998, the bureau closed down and revoked the licenses of five funeral establishments and a cemetery crematory in Contra Costa County for violations that included delivering cremated remains to families while the bodies were still in refrigeration. Last week, the owner of a San Bruno funeral establishment stipulated to revocation of his funeral establishment license. In that agreement, he also agreed to withdraw his crematory application. Had there been two regulatory programs, that crematory license probably would have been approved.

Unified regulation appears to be reasonable from a consumer standpoint as well. When there is one regulatory agency to address consumer questions and complaints and receive information and guidance from a single office, consumer protection can be arguably enhanced.

I will skip through some of the things that we would note and simply go to simply saying this: The way that cemetery goods and funeral goods and services are being provided in the world, in the country in which we live has been changing a great deal. Market integration has caused the way that they are provided to change greatly. And with the shift in how consumer goods and purchases and services are provided due to market integration, it would seem to follow that consumer protection issues and, moreover, the potential for consumer harm would follow the flow of how goods and services are provided.

As the trend moves away from the traditional funeral establishment and the stand-alone cemetery toward greater market integration, it is reasonable consumer protection can be provided by a single regulatory oversight of both industries.

Suggestions on how we can better protect consumers and inform consumers. Good consumer information such as what the FTC gives, such as what the State of California requires all funeral and cemeteries, licensed cemeteries to produce, or to make available for their consumers, and that is our "Consumer Guide to Cemetery and Funeral Purchases," which I forgot to bring this morning, but those are very basic. But, more importantly, people don't want to talk about these things. What we have to do is make available information that they can get to when they need to talk about it, such as when they have a complaint or when they are dealing with the death of a loved one. And so that is a very important one. We have our 800 numbers, 1-800-952-5210, the Department of Consumer Affairs helpline. And we have websites to make things avail-

able. Availability of information and not completely all the information itself sometimes is more important there.

A final note. On March 27, some 2 weeks ago, the Cemetery and Funeral Bureau obtained an interim suspension order against Woodlawn Cemetery Association in the city of Compton near Los Angeles. In mid-February, we had found at that cemetery on investigation there, inspection on the grounds, we found a human bone and casket parts on the surface of the ground of the cemetery. The bureau began an immediate inspection which resulted in the current administrative action.

During the time following that, we received over 2,200 calls in 3 days. Additionally, we set up temporary offices and met with families, over 400 families in about 4 days there. These events emphasize the often delicate nature of the cemetery and funeral regulation and the need to be proactive in stance by regulators in finding and addressing these violations.

Thank you for your patience.

[The prepared statement of Mr. Ayers follows.]



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**Testimony of G. V. Ayers, Bureau Chief
 Cemetery and Funeral Bureau
 Department of Consumer Affairs
 State of California**

Mr. Chairman and Members of the Committee: It is my privilege to appear before you today to speak about funeral, burial and preneed sales practices.

The 225,000 deaths each year in California represent approximately 9.6 percent of the deaths in the United States. (For 1998, California's 225,450 deaths comprised 9.6% of all deaths in the U.S. California's death rate of 6.7% is below the over all U.S. death rate of 8.7%). At some point, virtually every one of these deaths, are handled by one or more of the licensees of the Cemetery and Funeral Bureau. California is somewhat unique, in that it regulates virtually every component of the licensed funeral and cemetery industries through this single regulatory entity.

You have asked me to describe how both industries came to be regulated by one agency – the Cemetery and Funeral Bureau; the responsibilities and jurisdiction of the bureau; how states can better regulate these industries; and how consumer awareness and protection can be improved.

1. A genesis of the Department of Consumer Affairs' Cemetery and Funeral Bureau, focusing on how the two industries came to be regulated under one office.

In 1993, the California Cemetery Board and the California Board of Funeral Directors and Embalmers came under close scrutiny by the State Legislature. At that time, these semi-autonomous licensing boards regulated the industries under the general umbrella of the California Department of Consumer Affairs (Department). The Legislature convened hearings in which these two separate boards, and others, were reviewed with a view toward improving efficiency, eliminating duplicative functions, and eliminating regulatory agencies which no longer serve the public's need.

The Legislature received testimony from industry and the boards who argued that there was a great deal of difference between the cemetery and funeral industries.

The legislative background report states the issues well:

In objecting to a merger, the Funeral and Cemetery industries stress their differences. Funeral and embalming services are viewed as "short term" in that they generally provide one time services immediately following death, while cemetery services are viewed as "long term" and ongoing. In addition, the funeral and embalming industry involves the care and preparation of dead bodies, while the cemetery industry involves the disposal of dead bodies and care of memorial sites. Cemeteries also involve large capital investments in real estate which mortuaries do not necessarily require.

However, much of what the cemetery industry provides to the consumer is in reality "short term" service – burial, grave closing, marker placement. In addition, a great

number of licensees hold licenses in both industries. Because the close relationship of the industries is more compelling than their differences, a combining of the two boards seems likely to best protect the consumer.

The final legislative report found the boards' investigation and enforcement activities to be ineffective and non-existent and recommended that licensure for the death industry be transferred to a bureau under the director of the Department of Consumer Affairs.

The following year, 1994, reform legislation was introduced which proposed to eliminate the two boards and transfer their functions to a bureau under the director of the Department of Consumer Affairs.

That bill was lobbied heavily by both industries and members of the two boards, and as a result, died on the last night of the Legislative Session.

In 1995, agreement was reached with industry on legislation to merge the two boards into a single board. However, that legislation was derailed by the discovery in Southern California of what appeared to be serious crimes committed at various cemeteries under the board's jurisdiction. Urgency legislation was enacted to transfer both regulatory programs to the Department. The Department then consolidated the resources of both boards into the Cemetery and Funeral Programs. Since that time, January 1996, the state's cemetery and funeral industries have been regulated by a single state regulatory agency – the Cemetery and Funeral Program.

As a side note, a January 1996 report by the State Auditor found illegal and improper activities by two employees of the former Cemetery Board. The violations cited in the report included the illegal receipt of funds and violations of fiduciary duties.

Effective January 1, 2000, a change in statute changed the name from "Program" to "Bureau." In addition, the State Administration has articulated a policy to move the regulatory scheme into a more traditional bureau structure where enforcement, mediation, and licensing functions are centralized under a bureau chief.

2. A detailed description of the Cemetery and Funeral Bureau's responsibilities and jurisdiction.

The Cemetery and Funeral Bureau regulates nearly every aspect of the licensed cemetery and funeral industries. The bureau licenses and regulates some 890 funeral establishments, 190 cemeteries, and 170 crematories. The bureau individually licenses approximately 2,000 funeral directors, 3,400 embalmers, 1,300 apprentice embalmers, 250 cemetery brokers, 2,000 cemetery salespersons, and 200 cremated remains disposers. The bureau oversees funeral preneed trust funds, cemetery endowment care trust funds and special care trust funds. The bureau does not regulate insurance-based funeral preneeds, nor does it regulate the 1,200 religious, fraternal and public cemeteries.

The bureau's mediation and enforcement function addresses all consumer complaints against licensees. For fiscal year 98-99, the bureau received 558 complaints – 374 funeral and 184 cemetery. Although complaints may be mediated between disputing parties, those that appear to be violations of the law are referred to enforcement for possible investigation and disciplinary action.

The bureau conducted 376 investigations, inspected 472 businesses for compliance, issued 242 warning and violation letters, and issued 104 citations. The bureau takes administrative action through the State Attorney General's Office, and works with local District Attorneys in criminal actions. From 1996 to 1999, the bureau revoked 19 licenses and placed 26 licenses on probation.

The bureau conducts unannounced inspections of about 200 of California's 890 funeral establishments each year. The bureau also inspects funeral establishments upon initial licensure and change of location, and requires preneed trust fund audits upon change of ownership. The law also requires annual inspection of all licensed crematories.

The bureau has oversight of funeral preneed trust funds and cemetery endowment care funds and special care funds. Licensees file annual reports with the bureau, and the bureau may audit trust funds to ensure compliance with the laws, verify accounting and investing practices, and identify shortages. Audits may be initiated based upon the review of the report, failure to file the report, consumer complaints, or if it is believed the funds are not in compliance or are in jeopardy.

Since 1996, bureau audits of cemetery trust funds have identified some \$4.2 million in trust fund violations. The bureau has additionally participated in actions resulting in six criminal convictions, and the California Board of Accountancy has taken disciplinary action against a CPA for actions identified by bureau auditors.

The review of annual cemetery trust reports and licensing applications has resulted in \$1.3 million being repaid to trust funds.

When there is cause to believe that endowment care funds may be lost or injured, the bureau may take possession of the funds. The bureau then acts as conservator of the trust funds, and manages them to ensure that they are maintained in perpetuity for the care of the associated properties. Currently, the bureau holds three conservatorships.

On the funeral side, in 1999, the bureau ordered a Los Angeles funeral establishment to restore more than \$1.6 million to consumer preneed trust accounts. The establishment's former owner was previously sentenced to two years in prison, and a co-conspirator received a one year sentence. The bureau also provided assistance in Ventura County's prosecution and conviction of a former funeral establishment owner for fraudulently selling preneed policies to 88 victims.

Crematories are separately licensed by the bureau, however a cemetery may operate a crematory under its certificate of authority without separate licensing. There are some 74 separately licensed crematories, and 98 operate under a certificate of authority.

3. Suggestions as to how other states can better regulate these industries.

Because death ultimately touches every one of us, a state's regulatory scheme should be structured to assure protection from fraud, deceitful business practices, and an undisturbed final resting place. Although wide differences may be noted in the two related industries, their close relationship is more compelling than their differences. We believe there are distinct advantages to looking at both the cemetery and funeral industries with the same regulatory eye.

Anecdotally, we have found that what the consumer (or even the bureau staff) views as a funeral home complaint, sometimes ends up as a cremation, or cemetery complaint. Conversely, what might appear to be a cemetery or cremation complaint can, in reality, be a

funeral home complaint. In such cases, separate regulatory bodies obscure the consumer's access to help, and the consumer may give up in frustration and live with the harm. For regulators, such cases cause double efforts in addressing consumer complaints, and in the worst, results in complaints not being addressed at all.

A single regulator makes sense in other regulatory activities. It makes sense that one regulator could inspect both a funeral establishment and a crematory when they are at the same location or are owned by the same owner. When a cemetery is inspected, it makes sense to have the ability to also look at the funeral establishment operated by the same owner, and often on the grounds of the same cemetery.

In overseeing trust funds, licensees who violate cemetery trust fund laws, are likely to violate funeral preneed laws, and those who violate funeral preneed laws are likely to violate cemetery trust fund laws.

Similarly, trust fund violations can point toward other practice abuses on either the cemetery or funeral side. Violations in handling human remains or interments, can also indicate problems with trust funds.

Some of the bureau's most significant cases in recent years, likely would not, or could not, have been pursued, had the industries been separately regulated. In a January 1998 inspection at a Los Angeles crematory, bureau field representatives found numerous violations in handling human remains. The bureau obtained an Interim Suspension Order (ISO) against the crematory and the three funeral establishment cremation services – all under common ownership. The businesses, which held more than 40,000 preneed funeral accounts, were eventually required to be sold to new independent owners.

In July 1998, the bureau obtained an ISO against five funeral establishments and a cemetery/crematory in Contra Costa County. Bureau representatives found numerous violations including delivering cremated remains to families, when in fact, the uncremated bodies were still held in refrigeration. The bureau revoked the owner's eight licenses.

Last week, the owner of a San Bruno funeral establishment, stipulated to revocation of the funeral establishment license, and surrender of his cremated remains disposer registration. As part of the agreement, the owner withdrew additional applications for a crematory license, and a funeral establishment license. Had the two industries been separately regulated, it is likely that the crematory license would have been approved.

Unified regulation appears reasonable from a consumer standpoint as well. When consumers can address questions and complaints, and receive information and guidance from a single office, consumer protection can be arguably enhanced.

Market Integration of the funeral and cemetery industries also points toward unified regulatory oversight. Market integration occurs through direct competition, vertical, and horizontal ownership.

Integration through Direct Competition – Traditionally funeral establishments provided the goods and services related to the funeral ceremony, and cemeteries provided goods and services related to the burial plot. Today many of the goods and services offered by funeral homes can be purchased through cemeteries, creating direct competition. For instance, vaults, which most cemeteries require to prevent graves from settling, can usually be purchased through a funeral home or a cemetery.

Vertical Integration – Providers of funeral and cemetery goods and services become more vertically integrated by the acquisition of funeral establishments and cemeteries by a single owner. In some cases the funeral establishment is located on the grounds of the cemetery and in other cases, one owner holds multiple funeral homes and cemeteries in the same geographic area. This enables the industry to offer "one-stop shopping" to consumers, and establish strategic pricing policies to maximize profits by increasing prices.

Horizontal Integration – The industry is also experiencing horizontal integration as an owner purchases multiple competitors in close proximity. The clustering of these facilities allows the owner to benefit from economies of scale. The close proximity of businesses allows the owner to pool resources, reducing overhead and increasing profits.

Because of market integration, it seems likely that owners may well be positioning themselves to shift the provision of goods and services toward the regulatory scheme that best suits their purposes. For example, a funeral establishment owner may shift the sale of funeral goods to a cemetery under common ownership in an effort to avoid the more stringent price list and disclosure requirements of state and federal funeral law, and in an effort to avoid more restrictive state trust fund requirements. The owner may additionally shift the sale of those goods to, what may be, an unregulated casket store also under the same ownership.

With a shift in how goods and services are provided due to market integration, it would seem to follow that consumer protection issues, and moreover, the potential for consumer harm, follows the flow of how goods and services are provided. As the trend moves away from the traditional stand alone funeral establishment and the stand alone cemetery, and toward greater market integration, it is reasonable that greater consumer protection can be provided by a single regulatory oversight of both industries.

4. Suggestions for improving consumer awareness and protection where the funeral and cemetery industries are concerned.

It is estimated that as many as 68 percent of those that died in California in 1998 did not pre-plan any of their funeral or cemetery arrangements. That fact indicates that people do not want to address the subject.

In 1977, Consumer Reports wrote: "many bereaved survivors who come to funeral homes are emotionally vulnerable and not in a proper mental state to arrive at important decisions in a calm or rational way." This statement is still relevant today, because in the twenty-three years since those words were written, those basic facts have not changed.

Consumer Reports further wrote, "the funeral transaction is the most inequitable one imaginable. The (funeral director) is calm and collected, familiar with all the facts surrounding death, accustomed to dealing with survivors, and there for one purpose: to sell funeral goods and services for a profit. Buyers, on the other hand, are often totally at a loss to know what to do." This leaves consumers vulnerable in a number of ways.

Regulators can promote consumer awareness through basic consumer information. Information that provides accurate, usable explanations about consumer rights and options in nontechnical terms is an essential part of consumer awareness and education. In 1998, California enacted legislation requiring funeral establishments and cemeteries under the bureau's jurisdiction to make the bureau publication, *Consumer Guide to Funeral and Cemetery Purchases*, available to consumers.

Providing consumers with basic market integration information can additionally enhance consumer choice and awareness.

Yet, on a basic level, consumer reluctance to address cemetery and funeral arrangements will not be reversed by consumer guides and information. Many consumers will only want the information when they critically need it – when a loved one dies, or when they have a complaint against a licensee. It is important, therefore, that regulators not only provide information, but perhaps, more importantly, promote awareness of how consumers can access the information when they need it. The promotion of toll free telephone numbers (DCA 1-800-952-5210) and Internet addresses (www.dca.ca.gov/cemetery) where consumer information can be accessed is extremely important in providing information to consumers when they need it.

Regulators can also provide greater consumer protection by becoming watchdog agencies, rather than being completely complaint driven.

Because of the seemingly secretive and often private nature of the funeral and burial process, violations of law often are not readily apparent to consumers; and when they are apparent, consumers may be emotionally unwilling to file complaints. Therefore, regulators must take a proactive approach by conducting unannounced inspections and audits, and, when violations are found, taking appropriate disciplinary actions.

Many of the significant disciplinary actions that the bureau has taken in recent years were discovered by bureau field representatives in proactive inspections, or in following up on what might otherwise be considered unrelated consumer issues.

A final note – on March 27, some two weeks ago, the Cemetery and Funeral Bureau obtained an Interim Suspension Order against Woodlawn Cemetery Association, in the City of Compton, near Los Angeles. In mid-February, a bureau field representative, at the cemetery on an unrelated matter, conducted an inspection of the grounds and found indications of significant violations. The bureau began an immediate investigation which resulted in the current administrative action. Under the authority of the ISO, the bureau has shut down the operations of the cemetery in order to complete a cleanup of the grounds and conduct a thorough investigation. In three days following the closure, the Department of Consumer Affairs' Consumer Information Center (our 800 number) received 2,200 calls from consumers. Bureau staff endeavored to return all calls within 24 hours, and was largely successful. In addition, the bureau set up temporary offices in the Compton City Hall to meet with consumers who have family members buried in the cemetery. The bureau answered basic consumer questions, and gathered information about who they are and how they can be contacted if the grave of their family member is affected by the findings. Over four days the bureau staff met with over 400 people.

These events emphasize the often delicate nature of cemetery and funeral regulation and the need for a proactive stance by regulators in finding and addressing violations, and providing essential information and support to consumers when they need it the most.

Testimony before
The United States Senate
Special Committee on Aging
106 Dirksen Senate Office Building
Washington, DC

April 11, 2000

The CHAIRMAN. Thank you, Mr. Ayers.
Mr. Jacobson.

**STATEMENT OF JAY JACOBSON, NATIONAL FUNERAL
DIRECTORS ASSOCIATION**

Mr. JACOBSON. Senators, my name is Jay Jacobson. I am the manager of Garden Chapel Funeral Home in Pella, IA.

Let me start by saying that, first off, I have never been on "Date-line," I have never written a book, I have never been published in a national magazine. I am just a funeral director.

I am a graduate of the Kansas City College of Mortuary Science, and I have been a practicing funeral service professional for 20 years.

I am the president-elect of the Iowa Funeral Directors Association, and I am appearing here on behalf of the National Funeral Directors Association.

We hope to accomplish three things here today: first, to set the record straight about funeral service; second, to educate the committee members; and, third, to answer your questions.

Two of the most important factors in the survival of any funeral home or funeral business is its reputation in the community and the ability or the desire of its clients to call that funeral home again. That is why I and funeral directors across this country work diligently to solve consumer complaints.

Our State and national associations cooperate with authorities to ensure that Federal and State regulations are followed and that licenses are suspended or revoked from funeral homes or funeral directors who abuse the trust given to them by families they serve.

However, we cannot remain silent and fail to respond to the unfair, biased, and distorted testimonies given by some witnesses here yesterday.

A more objective presentation of the facts paints a positive and honest picture of funeral directors and funeral service.

A recent independent survey of 1,000 consumers shows that 96 percent of Americans believe in funerals and memorial services and have a high degree of confidence in the funeral professionals who arrange those services.

According to the Gallup poll surveys, funeral directors are ranked by consumers to be the most honest and trustworthy professionals in the country—excuse me, among the most honest.

These and other surveys of thousands of consumers provide objective evidence that counter the often unsubstantiated claims, the anecdotal stories used by critics who are philosophically opposed to funeral service and funeral ceremonies.

Without question, there are a few bad apples, a few bad funeral directors, just as there are a few bad members in any profession.

However, for you to suggest that these few unscrupulous funeral service providers who act illegally, unethically, are common to this profession is blatantly unfair and untrue.

Funeral service is both a business and a profession. The funeral director provides vital services to families choosing funeral goods and services. The funeral director also contributes to the well-being of the community in which he serves.

The funeral service profession should not be viewed as a few large chains or stockholder corporations. Families own 87 percent of the funeral homes in the United States. Many of these families have owned those businesses and served their communities for generations and hope to do the same in the future.

Because of significant changes in our society during the past half-century, there have been new and different attitudes toward death, dying, and funeral ceremonies that have brought about significant, almost radical changes in funeral services.

Consumers can now select their funeral services and merchandise a la carte from a variety of sources, including cemeteries, vault companies, casket retailers, and even the Internet.

Or they can choose to select their funeral services and merchandise from an all-inclusive source such as a funeral home which offers all items necessary to complete the service.

A growing number of funeral service customers are placing greater emphasis on the importance of a meaningful, personal, and individual service rather than the style of a casket.

These consumers want ultimate control over their funeral or memorial service. Consequently, they are the ones who determine what services they want, what merchandise they will purchase, and what price they will ultimately pay for the funeral or memorial service.

Our critics do not recognize these significant changes that have occurred in our society and in funeral service over the past several decades.

Mr. Chairman, I am extremely concerned about the tenor of these hearings. As the next to the last witness, I am shocked by the lack of credible funeral service professionals invited here to give testimony. Almost every detractor of the profession has been invited here to speak, and their critical, often inaccurate perspectives of funeral service have been entered into the record.

I am particularly disturbed because both the Iowa Funeral Directors Association and the National Funeral Directors Association have always indicated a willingness to work with you as chairman of this committee. We have also worked with the General Accounting Office, the FTC, State regulators, and consumer groups to identify issues of concern and seek responsible and reasonable resolutions for these issues.

We have heard from a cemetery manager who is trying to sell his book, a priest with a strong anti-funeral bias, the president of Funeral and Memorial Societies of America—an organization whose main purpose is advocating minimal funeral services as the only choice consumers should be making, and to legislate that philosophy, if necessary.

All of these people have been given "expert" status at this hearing, even though most of them do not have the practical experience of helping consumers plan funerals on an almost daily basis.

Senator, on a personal note, after listening to the testimonies of the previous witnesses, it strikes me as odd that so far I am the only practicing funeral director scheduled to testify on behalf of funeral directors.

I serve on the front lines, placing the needs of hurting people who call on me ahead of everything else. I have answered that call

for over 20 years. Days, nights, weekends, holidays—I am there helping families when death knocks at their door.

The CHAIRMAN. Is that the end of your testimony?

Mr. JACOBSON. Yes, it is.

[The prepared statement of Mr. Jacobson follows:]



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JAY JACOBSON
NATIONAL FUNERAL DIRECTORS ASSOCIATION

COMMENTS TO:
UNITED STATES SENATE SEPCIAL COMMITTEE ON
AGING

April 11, 2000

My name is Jay Jacobson. I am the manager of Garden Chapel Funeral Home in Pella, Iowa.

I am a graduate of the Kansas City College of Mortuary Science and have been a practicing funeral service professional for more than 20 years.

I am the president-elect of the Iowa Funeral Directors Association and I am appearing here on behalf of the National Funeral Directors Association.

We hope to accomplish three things here today . . . First . . . to set the record straight about funeral service . . . Second . . . to educate the committee members and . . . Third . . . to answer your questions.

Two of the most important factors in the survival of any funeral home are its reputation in the community . . . and having families It has served in the past use its services again. That is why I . . . and

funeral directors across the country . . . work diligently to resolve consumer complaints.

Our state and national associations cooperate with authorities to insure that federal and state regulations are followed and that licenses are suspended . . . or revoked . . . from funeral homes . . . or funeral directors. . . who abuse the trust given them by the families they serve.

However . . . we cannot remain silent and fail to respond to the unfair . . . biased. . . and distorted testimony given by some witnesses here yesterday.

A more objective presentation of the facts paints a **positive and honest** picture of funeral directors and funeral service.

A recent independent survey of one thousand consumers shows that 96% of Americans believe in funerals and memorial services . . . and have a high degree of confidence in the funeral professionals who arrange those services.

According to Gallup Poll surveys . . . funeral directors are ranked by consumers to be among the most honest and trustworthy professionals in the country.

These and other surveys of thousands of consumers . . . provide objective evidence that counter the often unsubstantiated claims . . . and anecdotal stories . . . used by critics who are philosophically opposed to funeral service and funeral ceremonies.

Without question . . . there are a few bad Funeral directors . . . just as there are a few bad members in any profession.

However . . . suggesting that these few unscrupulous funeral service providers who act illegally . . . or unethically . . . are common to this profession . . . is blatantly unfair . . . and untrue.

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The funeral director provides vital services to families choosing funeral goods and services. The funeral director also contributes to the well being of the community in which he or she serves.

The funeral service profession ***should not*** be viewed as a few large chains . . . or stockholder owned companies.

Families own and operate 87% of the funeral homes in the United States.

Many of those family-owned businesses have served their communities for generations and hope to do the same for generations to come.

Because of significant changes in society during the past half century . . . there have been new and different attitudes towards death . . . dying . . . and funeral ceremonies . . . that have brought about significant . . . almost radical . . . changes in funeral service.

Consumers can now select their funeral services and merchandise ala carte from a variety of sources including cemeteries vault companies casket retailers and even the internet.

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Senators . . .

On a personal note . . . after listening to the testimony of the previous witnesses . . . it strikes me as odd that . . . so far . . . I am the only practicing funeral director scheduled to testify on behalf of funeral directors.

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I've answered that call for over twenty years . . . days . . . nights . .
.week-ends . . . holidays . . . I am there . . . helping families when
death knocks at their door . . .

**STATEMENT OF THE
NATIONAL FUNERAL DIRECTORS
ASSOCIATION
BEFORE THE
UNITED STATES SENATE
SPECIAL COMMITTEE ON AGING
ON ISSUES RELATED TO FUNERAL
SERVICE AND THE FUNERAL RULE**

APRIL 11, 2000

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The National Funeral Directors Association ("NFDA") welcomes the invitation of the United States Senate to submit written comments on issues relating to funeral service and the Funeral Rule. These written comments will supplement the oral testimony that NFDA will provide at the April 11, 2000 hearing to be conducted by the Special Committee on Aging.

I. THE NATIONAL FUNERAL DIRECTORS ASSOCIATION

NFDA, as the largest association of funeral directors in the United States, serves as the national representative of the funeral profession. It has been in continuous operation since 1882 and currently represents nearly 14,000 licensed funeral directors and mortuary science students throughout the country. NFDA provides extensive government relations, education and communication programs on behalf of the nation's funeral profession.

A. Structure of NFDA.

NFDA is a non-profit Section 501(c)(6) corporation with its national headquarters in Brookfield, Wisconsin. In addition to the nearly 14,000 licensed funeral directors and students that are members, state funeral associations in each of the 50 states and the District of Columbia belong to NFDA. NFDA and the state funeral associations compliment each other in assisting their members with issues that impact funeral service on a national, state and local basis.

NFDA is governed by three bodies, each comprised of volunteer members. The first, the House of Delegates, consists of 600 members who meet at the Annual Convention of the Association to elect officers, consider amendments to the Constitution and Bylaws, and deal with other NFDA business. The second body, the Policy Board, is comprised of one representative from each of the 51 state associations. Its primary responsibility is to develop policy positions on issues impacting the funeral profession. The final body, the Executive Board, consists of the five officers elected by the House of Delegates and four At-Large Representatives elected by the

Policy Board. It implements the programs and policies adopted by the House of Delegates and the Policy Board.

In addition to the three governing bodies, NFDA has four standing committees to deal with education, communication, government relations and operations. It also employs 42 full-time staff members in its Brookfield, Wisconsin headquarters and its Washington, D.C. office.

B. Mission and Role of NFDA.

The mission of NFDA, as set forth in its Constitution, is as follows:

"The mission of NFDA is to enhance the funeral service profession and promote quality service to the consumer. NFDA is dedicated to fulfilling its mission by: promoting national leadership and a national identity for the profession; developing effective partnerships with State Associations; and providing direct service to Practitioners."

The first role of NFDA is to be the national representative and voice for the funeral profession in the United States. As the largest funeral service organization with a membership that encompasses funeral service professionals from small family-owned funeral homes as well as the large publicly-traded funeral service companies, NFDA is uniquely positioned to serve that role.

The second major function of NFDA is to provide its members with the knowledge and skills necessary to insure the delivery of ethical, professional, and dignified care to the families they serve. The Association is the leading national resource for funeral service education, information and research that our members need to successfully carry out their duties.

A third overriding function of NFDA is to assist our members in service to their communities. The funeral director should be the primary resource to his or her community in the areas of funeral and memorialization, preplanning, continuing care, dying, death and bereavement. NFDA carries out this function by providing our members with the information and tools they need to fulfill their role as the community resource.

The final role of NFDA is to promote governmental policies, legislation and regulations that support the funeral profession, protect the consumer, and safeguard the environment. As the leading resource in consumer, safety and health, and environmental issues related to funeral service, NFDA works with legislators and regulators to craft and implement policies that best serve the public and the profession.

II. THE FUNERAL RULE AND OTHER REGULATORY ISSUES

In this Section II, NFDA addresses the Committee's request for information on the issues our members face in complying with the Funeral Rule and other government regulations.

A. The Funeral Rule.

NFDA has been a key participant through all facets of the development and implementation of the Funeral Industries Practices Regulation ("Funeral Rule") by the Federal Trade Commission. NFDA's original opposition to the Funeral Rule was grounded in its long-held belief that regulation of the funeral industry is more effective on a state level where it has been traditionally exercised. Nevertheless, despite that opposition, NFDA took the lead in educating the nation's funeral directors regarding their duties and obligations under the Funeral Rule once it was implemented.

During the past 16 years that the Funeral Rule has been in effect, NFDA and its members have recognized that the Rule provides benefits to consumers and funeral directors alike. The three written price lists required by the Funeral Rule have become effective tools that funeral directors use in explaining to families the various components of the funeral and available options. The detailed price itemization imposed by the Funeral Rule has also encouraged funeral homes to closely analyze their cost centers and set prices that provide fair and appropriate cost recoveries. As a result, the Funeral Rule has made funeral directors better businessmen and women, and made the families they served informed consumers.

In addition to the informational benefits of the Funeral Rule, it also provides funeral consumers with basic rights and protections. Consumers have the right to detailed and itemized price lists before they make any purchase decision. They are given an itemized statement of the goods and services they selected when the purchase is made. Consumers are also given written disclosure of information that helps them understand the legal and practical aspects of a funeral that may impact their purchase decisions. They are protected against misrepresentations that may mislead them into purchasing unnecessary funeral goods or services. Finally, they are given the unfettered right to use merchandise purchased outside of the funeral home and have the funeral director service that merchandise without any restrictions or fees.

Unfortunately, while every consumer who buys funeral goods and services from a funeral director is entitled to the comprehensive set of rights and protections afforded by the Funeral Rule, no such safeguards are given to consumers who purchase funeral goods or services from third party sellers. The Funeral Rule only covers sellers of funeral goods and services. Therefore, cemeteries, retail casket stores, and direct disposition companies can escape the coverage of the Funeral Rule by selling either funeral goods or funeral services, but not both. As a result, any funeral consumer purchasing from those sellers receives none of the protections and safeguards mandated by the Funeral Rule.

This loophole in the Funeral Rule was not readily apparent when it was drafted 25 years ago because at that time funeral goods were primarily sold only by funeral directors. The funeral industry has changed dramatically since that time with the emergence of third party sellers. In today's market, consumers are purchasing funeral goods or funeral services from an increasing array of sellers, none of which are governed by the Funeral Rule. The loophole created 25 years ago when the Funeral Rule was drafted has become immense and left tens of thousands of funeral consumers without safeguards and protection.

Last year, the FTC commenced a second review of the Funeral Rule. In its written and oral comments to the Commission, NFDA has voiced its strong support to retain the Rule and strengthen it to meet the realities of today's funeral market. NFDA is advocating that the FTC extend the protections of the Funeral Rule to cover all consumer transactions involving the purchase of funeral goods or services. This simple modification to the Funeral Rule will close a loophole that has deprived many funeral consumers of the protections and informational benefits now enjoyed by those consumers who deal with funeral homes.

B. Compliance with the Funeral Rule.

The Funeral Rule is a complex and detailed regulation that imposes a substantial set of obligations and duties on funeral directors. Funeral directors are required by the Funeral Rule to present price information to families at times and in situations that can appear very insensitive to a grief-stricken family. For the most part, funeral directors have learned how to balance compassion with compliance. Nonetheless, the Funeral Rule does present daily challenges to funeral service professionals.

NFDA has worked with the FTC to address Funeral Rule compliance issues. During the first review process and in the current review, we have requested several modifications to the Funeral Rule to clarify vague and imprecise requirements of the Rule. NFDA has also pointed out those provisions of the Funeral Rule that result in insensitive treatment of consumers.

In some instances, the FTC has responded to our concerns and made modifications. For example, when NFDA showed that certain telephone price disclosures were awkward and oftentimes misinterpreted by consumers, the FTC eliminated the requirement.

In the current review process, NFDA has addressed two compliance issues - - the distribution requirements of the general price list and the handling of third party merchandise. We are requesting the FTC to modify the imprecise terminology now used by the Funeral Rule in

describing when a general price list must be presented to a consumer. NFDA is also asking for a set of compliance guidelines from the FTC to assist funeral directors in understanding their obligations in accepting and servicing third party merchandise.

NFDA believes that its own educational programs and the enforcement efforts of the FTC have raised compliance to a high level. In fact, the FTC reports a 90% compliance level in its undercover shopper program. As detailed in Section IV of these comments, NFDA continues to seek improvements in the compliance level through a number of educational programs and initiatives provided to our members.

C. Other Federal Compliance Issues.

In addition to the Funeral Rule, NFDA members encounter on a daily basis an increasing array of federal regulations that impact funeral service. These include the following:

- OSHA regulations, including the Bloodborne Pathogens Standard, Hazard Communication Standard, Formaldehyde Exposure Standard, and the proposed Ergonomics regulation.
- IRS regulations on the taxation of preneed trust funds.
- EPA regulation of air and water emissions from crematories and funeral homes.
- Health and Human Services regulations that govern burial fund exclusions for SSI and Medicaid beneficiaries who preplan their funerals.
- Veterans Administration regulations governing funeral and burial benefits for veterans.
- ADA requirements on the accessibility of funeral homes and the provision of services to disabled members of the public.
- Wage and Hour compliance issues that apply to funeral homes.

NFDA, through its government relations program, works with federal regulators on a daily basis to address the concerns of funeral service. The Association also employs significant resources in its education and communication programs to keep our members abreast of the current federal regulations and their compliance obligations.

D. State Law Compliance.

The state regulation of funeral service primarily involves licensing and preneed issues. The majority of state law legislation and regulation issues are handled through the 51 state funeral associations. NFDA serves as a resource in compiling state funeral regulations and facilitating the exchange of information among the state associations. We also have served as a forum that our members can use to adopt positions regarding state law issues. For example, the NFDA Policy Board, which is made up of 51 representatives from each state and the District of Columbia, has recently enacted policies on educational standards for funeral directors and reciprocity issues. It has also compiled and approved the Consumer Preneed Bill of Rights that is discussed in Section IV below.

While state regulation of funeral service has increased over the years, especially in the area of preneed, NFDA does not believe that our members have encountered any significant state law compliance problems. The state funeral associations provide government relations and education programs to assist funeral professionals understand their responsibilities and maintain compliance. We believe the partnerships between NFDA and its state associations have resulted in a high level of compliance by funeral directors with federal, state and local laws and regulations.

III. RESOLUTION OF CONSUMER COMPLAINTS

A. Level of Consumer Complaints.

The Special Committee on Aging indicated in its March 15, 2000 correspondence to NFDA that it is investigating the funeral and cemetery industries because of serious allegations that have been directed at those industries. NFDA welcomes that scrutiny and urges the Committee to examine the documentary evidence that exists regarding the level of consumer complaints.

The United States General Accounting Office ("GAO"), in response to a request by the Special Committee on Aging, examined the level of consumer complaints in the death care industry. In its research, the GAO obtained data from the FTC, the Better Business Bureau, the Funeral Service Consumer Assistance Program, and other consumer agencies. It also received information from funeral regulatory agencies in the five states of California, Florida, Maryland, New York and Texas. Those five states are significant not only for the size of their populations, but also because California, Florida, New York and Texas require funeral directors to print on price lists and/or preneed contracts given to consumers the names, addresses and phone numbers of state agencies where consumers can lodge complaints against funeral directors.

The findings of the GAO were presented to the Committee in a report dated September, 1999 ("GAO Report"). In the Report, the GAO concludes that the level of consumer complaints regarding death care industries was low. A succinct summary of the GAO findings is set forth in this excerpt from the Report:

"Although the range of complaints was broad, we did not find numbers of complaints at FTC, nongovernmental organizations, and selected state agencies. Generally across all of the types of organizations we contacted, most officials and representatives said that they received few complaints about death care. Reasons provided for the low number of complaints included the personal or emotional component of the death care situation and the fact that consumers may have been satisfied with the goods and services received." GAO Report at p. 10.

It is important to note that the GAO surmised that one reason for the low level of consumer complaints may be the "personal and emotional component of the death care situation." The GAO reported that although the FTC is not aware of any studies that supports the premise that consumers do not complain because of embarrassment or emotional reasons, there was anecdotal support for that belief.

If embarrassment and emotional concerns inhibited consumers from complaining to government regulators and consumer agencies, one would still expect to see evidence of dissatisfaction in consumer attitudinal surveys. If this "unreported" wave of consumer dissatisfaction with the death care industry truly existed, it would be uncovered when funeral consumers were asked in surveys to evaluate their personal experiences with funeral directors and funeral services they purchased.

Fortunately, such a survey exists. The Funeral and Memorialization Council ("FAMIC"), a death care industry group of which NFDA is a member, retained Wirthlin Worldwide to conduct comprehensive surveys of consumers of death care services and products. Wirthlin Worldwide, an independent consumer survey company, has performed the survey in 1990, 1995 and 1999. An executive summary of the 1999 survey is attached as Exhibit A.

The 1999 Wirthlin survey reported a 5:1 ratio of positive to negative comments when funeral consumers were asked their attitudes toward the people and businesses in the death care industry. As Wirthlin reported, "this exceeds what is normally considered to be a healthy ratio of 3:1 for a typical industry." Wirthlin also reported that overall consumer satisfaction with services received at funeral homes is high with 80% of consumers reporting they would not change any aspect of their personal experiences.

The funeral profession is proud of these high levels of consumer satisfaction. Given the significant emotional stake involved in a funeral and the many details that must be attended to in

a short time frame under difficult circumstances, the level of consumer satisfaction with the funeral profession and funeral arrangements is significant. It certainly undercuts any anecdotal claims of consumer dissatisfaction.

B. Resolution of Consumer Complaints.

With over 2.3 million funeral and disposition services conducted each year in the United States, it is inevitable that some consumer complaints will arise. The vast majority of these are resolved by the funeral homes' staff. In a profession where economic survival depends largely upon return business from families serviced in the past and positive word-of-mouth referrals, the funeral professional makes every effort to resolve consumer concerns.

When asked why they selected a particular funeral home, approximately 70% of consumers in the 1999 Wirthlin survey cited previous experience with the funeral home, location, reputation of the funeral home, and recommendations of others as the most important factors. Clearly, any consumer dissatisfaction with service, prices or personnel will lead to a quick erosion of a funeral home's market share. The funeral director has an overriding economic incentive to insure consumer satisfaction with the funeral experience.

For those cases where a consumer complaint is not resolved by the funeral home, NFDA has established the Funeral Service Consumer Assistance Program ("FSCAP"). FSCAP, which is recognized by the FTC as a consumer assistance program, has been helping funeral consumers for over 20 years. It operates independently of NFDA through funding provided by the Funeral Service Education Foundation, a 501(c)(3) educational organization started by NFDA.

Consumers who contact FSCAP through its toll-free number are given advice and recommendations for resolving their complaints. If the FSCAP representative cannot resolve the concerns of the consumer, he or she will refer the consumer to appropriate state or local government agencies. FSCAP also provides free consumer information regarding funeral

services, preneed planning and bereavement. A copy of the FSCAP brochure is attached as Exhibit B.

FSCAP receives approximately 1,000 calls a year from consumers, of which 23% are complaints regarding a funeral home and 77% are requests for consumer information.

IV. PROGRAMS TO PROTECT FUNERAL CONSUMERS

NFDA and the Funeral Service Education Foundation ("FSEF") provide many programs that directly or indirectly assist at-need and preneed funeral consumers.¹ As detailed below, most of these programs are directed toward education of the funeral consumer either directly or through funeral directors. NFDA strongly believes that the best protection consumers can have is to be well informed.

Classification of NFDA's and the FSEF's programs fall under three general subheadings: consumer education, funeral director information, and funeral director educational programs. Under each subheading, NFDA has provided a brief summary of the programs and how they assist consumers. If more information is needed on any of the programs, please contact Robert E. Harden, NFDA Executive Director.

A. Consumer Programs

1. NFDA Website. NFDA's Website at nfda.org contains a plethora of information regarding funeral arrangements, consumer information and NFDA. It also provides excellent links to other funeral service organizations, government agencies and consumer advocacy groups. On a monthly basis, NFDA's Website receives approximately 250,000 hits with an average of 40,000 user sessions.

¹ Since NFDA is an association of licensed funeral directors, it does not address the concerns of cemetery consumers.

NFDA has attached as Exhibit C several downloaded pages from the Website's Consumer Resources section. Information on preneed planning, the preneed consumer bill of rights, funeral prices, funeral options and links to more sources of consumer information are all available. NFDA believes that the Website has been a very valuable source of information to funeral consumers.

2. Family Contact Program. Funeral homes may subscribe to a family contact series through NFDA. Under the program, consumers receive surveys from the funeral home following funeral services. The survey asks questions regarding consumer satisfaction with all aspects of the funeral arrangement. The completed surveys are mailed directly to NFDA, which tabulates the results and issues a report to the funeral home. This direct consumer feedback is an invaluable resource for the funeral homes that participate in the Program.

3. FSCAP. As indicated in Section III above, FSCAP not only offers consumer assistance with problems, but it also provides consumer information regarding funeral service. FSCAP provides free consumer education brochures including *The Buyer's Guide to Preplanning, Planning a Funeral, and Understanding Grief*. Over 750 consumers received information from FSCAP last year.

4. Funeral Home Libraries and Resource Centers. In order to assist their families and serve as a community resource on death and bereavement issues, many funeral homes have developed resource centers and lending libraries of books, videotapes and brochures for consumers. FSEF currently offers 200 titles covering death, dying and bereavement issues as well as consumer brochures on making at-need and preneed funeral arrangements. Many funeral directors routinely purchase these consumer informational materials in order to stock their funeral home resource centers.

B. Educational Information Provided to Funeral Directors.

NFDA and FSEF provide a continuous stream of educational information to funeral directors through several different mediums. Educational information includes the following:

1. The Director Magazine. NFDA's official monthly publication, *The Director* magazine is sent to more than 13,000 funeral directors nationwide. A large part of *The Director* is dedicated toward informing funeral directors of their compliance obligations under federal and state laws and regulations. In addition, feature articles and regular columns educate readers on how to improve their business and management skills as well as the care they provide to the families they serve. *The Director* also lists the numerous educational programs and services provided by NFDA, FSEF, state funeral associations, and other funeral service organizations.
2. Special Interest Sections. An important membership benefit provided by NFDA is enrollment in a Special Interest Section. Members can choose to belong to the Business and Management section, Service to Families section, and/or the Technical Operations and Compliance section. Each member is given a free enrollment in the section of his or her choice and the option to belong to two or more sections for a nominal fee. Each section has its own newsletter which provides up-to-date information on funeral home operations, legal and regulatory compliance, and excellence in consumer service.
3. NFDA InfoCentral. Through its InfoCentral program, NFDA offers members a series of regulatory compliance manuals on the FTC Funeral Rule, employer obligations, the ADA, and OSHA requirements. Additional materials address state legal requirements dealing with preneed, licensing, and transportation issues. Information is also available regarding funeral customs of different religions and nationalities. The materials provided through InfoCentral can be accessed by members through NFDA's Website, by NFDA's automatic

faxback system, or by telephone orders. In addition, the regulatory compliance materials are included in the NFDA Directory of Members which is sent to each member on an annual basis.

C. Education and Compliance Programs.

NFDA, through its own education department, and the FSEF offers a broad selection of education and compliance programs to funeral directors. Our audience for these programs continues to expand as NFDA taps into online learning, at-home study courses, and teleconferences. A listing of these programs include the following:

1. NFDA Online Learning Center. NFDA is now offering online continuing education credit via the Internet for licensed funeral directors. The debut course is entitled "Ethical Decisionmaking for Funeral Service Professionals." Other courses this year will include a series on bereavement covering traumatic grief and how children grieve. The online learning center is open to NFDA members and non-members.
2. Annual Convention. At its Annual Convention, NFDA offers convention workshops that are attended by an average of 5,500 attendees. Typically, close to 50 different workshops will be offered each year on a variety of different topics that impact funeral service.
3. Teleconference. For the past two years, NFDA has offered a series of teleconferences throughout the year on compliance issues and other topics. These two hour seminars which include question and answer periods, offer a convenient way for funeral home and their staff to attend educational programs without leaving the office.
4. NFDA Compliance Program. In 1996, NFDA started the Consumer Assurance Program ("CAP") to assist its members with FTC Funeral Rule compliance. CAP participants were required to have their price lists reviewed for compliance with the Funeral Rule, complete annual training of the funeral home staff, and agree to abide by a price list distribution policy.

In 2000, NFDA will be rolling out the successor to the CAP Program that will focus not only on the FTC Funeral Rule, but other federal regulatory requirements. The compliance series will consist of approximately 16 program offerings that will deal with compliance with the Funeral Rule, OSHA requirements, employment practices, ADA compliance, environmental practices and potential liability concerns. This new education program will be delivered via audiotapes, videotapes, teleconferences and NFDA's online learning center. Participants that complete the program will receive a certificate of completion on an annual basis.

5. FSEF Home Study Program. The FSEF offers distant learning opportunities via books, audiotapes and videotapes. Current courses address subjects on grief and bereavement, better understanding the consumer, creating meaningful funeral ceremonies, cultural diversity, funeral etiquette, the Funeral Rule, enhancing communication skills, and professional image. There are approximately 400 participants per year.

6. Funeral Rule Offenders Program. The Funeral Rule Offenders Program ("FROP") was developed in conjunction with the FTC in 1996. As a result of the FTC's undercover shopper enforcement program, a number of funeral homes were being charged with Funeral Rule violations. While civil enforcement actions against these funeral homes punished them for the violations, they did nothing to educate the funeral home staff to avoid future violations. To remedy this situation, NFDA proposed to the FTC that a program which emphasized education rather than punishment would be more beneficial to consumers and funeral service. The FTC agreed and the FROP Program was developed as an alternative program that the FTC could offer a funeral home in lieu of a civil enforcement action under the Funeral Rule.

There are approximately 100 participants currently in the FROP Program. The program requires a five year commitment. To be eligible for the program, the funeral home must pay a voluntary contribution to the government and agree to abide by all the terms of the program. Funeral homes in the program have their price lists reviewed for compliance with the FTC Funeral Rule and participate in annual training via teleconferences and course materials.

7. Certified Preplanning Consultant Program. Through the FSEF, a national certification program is available for consultants who assist consumers in preplanning and/or prefunding funerals ("CPC"). Applicants seeking CPC certification must attend a two-day educational workshop that incorporates materials on preplanning, funding mechanisms, contract terminology, ethical standards, knowledge of the Funeral Rule, customer service (with specific information on aging consumers), and the value of the funeral.

There are currently 310 certified CPCs in the program since it began in 1996. It is projected that another 125 candidates will be certified in 2000. Recertification is required every four years.

8. Pursuit of Excellence. The Pursuit of Excellence Program ("POE") is an NFDA-sponsored national program that recognizes funeral homes for their excellence and achievement in the following eight areas: education, compassionate service, technical skills, community and professional service, library or media resources, professional development, in-staff training, and public and community relations.

D. The Protective Value of Education and Information.

NFDA believes that the best protection available to consumers is information and education. A well-informed consumer is a protected consumer.

Funeral information and education is currently being delivered to the consumer through a number of avenues: the Internet, consumer groups, the media, the government, and funeral

service organizations. However, the most widely used method to convey this information to the consumer is the funeral director. While a growing number of consumers tap different sources for information on funerals, the overwhelming majority of consumers still look to their funeral director for this information.

This is the reason that the education and compliance programs that NFDA and FSEF provide to funeral directors are so important to consumer protection. By educating the funeral director, NFDA and FSEF educates the funeral consumer.

V. CONCLUSION

NFDA appreciates this opportunity to submit written comments and to present testimony at the April 11, 2000 hearing before the Senate Special Committee on Aging. We are confident that the Committee will reach the same conclusions borne out by the GAO Report and the Wirthlin surveys: that funeral service professionals provide families with a level of service and care that produces a high degree of consumer satisfaction.

At the same time, NFDA knows that it must continue to educate members and work with government officials to maintain and improve funeral service compliance with federal and state regulations. We fully recognize that the best interests of the funeral service profession can only be achieved by pursuing the best interests of the funeral service consumer. NFDA is committed to this mission.

Respectfully submitted,

NATIONAL FUNERAL DIRECTORS
ASSOCIATION

By: 

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(513) 241-5540



**Executive Summary Of The
Funeral And Memorial Information Counsel
Study Of American Attitudes Toward Ritualization And
Memorialization: 1999 Update**

**Prepared by
WIRTHLIN WORLDWIDE**

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January 2000



EXECUTIVE SUMMARY

Wirthlin Worldwide is pleased to present the results of the third wave of the *American Attitudes Toward Ritualization and Memorialization Study*. This study is built on previous studies conducted in 1990 and 1995. Our purpose is to measure changes in consumer perspectives of the funeral industry and its services, changes in consumer attitudes and opinions about industry professionals, as well as preferred ritualization and memorialization practices.

This third wave of tracking consists of 1,002 interviews with adults 30 years of age and older. Forty percent (40%) of respondents are male and sixty percent (60%) are female. As with previous studies, the sample included more females since they are known to be primary decision-makers regarding remembrance and memorialization choices.

Interviews were conducted between September 1st and September 20th, 1999, by trained interviewers at our Wirthlin telephone facility in Orem, Utah. Interviews lasted an average of twenty-one minutes.



Funerals

Americans continue to have positive attitudes about attending funeral and memorial services, and about the professionals who help arrange these services. Nearly all (96%) of the 1,002 consumers surveyed have attended a funeral or memorial service. The number of respondents who go to the cemetery immediately after a funeral service (81%) has remained fairly steady since the 1995 tracking wave. [Figure 6] Over two-thirds (68%) of respondents say they have attended a funeral in the last two years. [Figure 7] This number shows a change from the 1995 and 1991 studies.

The most often named source of information for those choosing an arrangements provider is *friends and relatives* (33%). [Figure 8] *Previously served my family* (47%) is still the key factor when selecting a funeral home—consistent with 1995 research. Convenience (*close to my residence*), reputation and familiarity (*previously visited facilities*) are also factors influencing funeral home selection. [Figures 9 & 10]

Nearly all (95%) of those surveyed attend a funeral or memorial service as a way to show their feelings after death. After the funeral service, 80% prefer to go immediately to the cemetery. When respondents are asked what type of service they would prefer if making arrangements for themselves, 56% say they would choose a traditional ceremony. Seventeen percent (17%) say they would prefer a private service, and 11% would prefer a memorial service (a service without the body present). Nine percent (9%) indicated they wanted no ceremony. [1999 was the first year this question was asked.]

Of those who have had the responsibility of making arrangements for a traditional burial, nearly three quarters (74%) of those electing an earth burial prefer an open casket (up 6% from 1995). Of those who elect to have a closed casket, 29% now do so as a request of the deceased (up from 9% in 1995), and 30% say they do not feel an open casket is necessary (up from 24% in 1995). Among those who prefer a closed casket, the number *philosophically opposed* to an open casket has dropped from 33% in 1995, to 9% in 1999. [Figure 11]

Overall, customer satisfaction with service received at the funeral home is high; 80% report not wanting to change anything about their personal experience. [Figure 12] As with most customer goods or services, desired changes most often expressed deal with cost and personal attention. [Figure 13]



KEY FINDINGS

The following sections highlight key findings of the study in six major areas of interest: industry perceptions, funerals, monuments, cemeteries, cremation, and pre-arrangement.

Industry Perceptions

The funeral industry includes funeral homes, monument builders/dealers, cemeteries, crematoriums, and those providing pre-arrangement services. When asked about their impressions of the people and businesses involved in providing services to honor or remember loved ones, respondents continue to think very favorably of the ritualization and memorialization industry. This exceeds what is normally considered to be a healthy ratio of 3:1 for a typical industry. Two-thirds (69%; up from 68%, 1995; 65%, 1990) of the comments reflect positive feelings about the people and businesses involved. Overall, there is a 5:1 ratio of positive to negative comments.

When respondents were read a series of eight attributes that may or may not describe people and businesses in this profession, two of the eight attributes changed from 1995: *People in the industry are professional and competent* (86% agree; down from 91% in 1995; 85% in 1990) and *Makes me feel that i did the best I could have done* (91% agree; up from 85% in 1995; 83% in 1990). [Figure 1]

While respondents indicate overall approval of advertising for funeral industry products and services, 13% now say it is not appropriate to advertise (up from 8% in 1995 and 6% in 1990). [Figure 4] According to respondents, funeral homes remain the most accepted area for industry advertisement (79% approval), with monument suppliers (77%), cemeteries (72%), casket makers (62%), crematoriums (62%), and urn manufacturers (58%) following, respectively. Approval ratings for these individual product/service areas were, down slightly from the 1995 study.

Efforts to increase consumer exposure to products and services via independent stores and Internet websites are just beginning to impact the public. Fourteen percent (14%) of respondents have personally visited a store outside a funeral home where caskets are sold, and 1% have ever looked for information on a funeral home or casket on the Internet. [Figure 5]



Of those choosing cremation for themselves, most would want some type of service—either a *traditional* (32%), *private* (26%), or *memorial* (25%) ceremony. [Figure 22]

Over half of respondents (59%) say they would dispose of the cremated body by scattering cremated remains (a 20% increase over 1995—not asked in 1991). Preferences are for scattering *over the water* (30%), *over land* (20%), or at a location *requested by the deceased* (18%). [Figure 23] Requests from the deceased represented the largest change toward disposing of cremated remains. *Locations requested by the deceased* are up 16% over 1995.

More than half (57%) of respondents say they would like some sort of “permanent” memorial to remember the cremated person. The most popular choice was a *living memorial* such as a planted tree (38%), followed by a monument (31%). The number of respondents indicating a living memorial as a consideration has doubled to 38% (from 19% in 1995). [Figure 24]

Pre-Arrangement

Pre-arranging the details of one's own funeral is still preferred (84%) to *letting someone else make those final decisions* (14%), but funeral planning remains one of those things people put off doing something about. [Figure 25] Forty percent (40%) of respondents indicate they plan to pre-arrange within the next five years. Only one-fourth (26%) of all respondents say they have actually made any arrangements. [Figures 26 and 27]

Asked for the first time in 1999, more than half (56%) say they would prefer to arrange a traditional service for themselves. Seventeen percent (17%) would prefer a private service and 11% would prefer a memorial service. Only 9% indicated they wanted no ceremony. [Figure 28]



Monuments

The trend to contact a monument builder when purchasing a monument or gravestone continues. [Figure 14] More than half (52%) of those arranging a funeral prefer to deal with a monument design specialist because they feel the specialist: *offers more options/selection* (26%); *has more expertise* (26%); *offers the opportunity to see what you are getting* (25%). [Figure 15]

Cemeteries

The majority of those who have been involved with funeral arrangements in the past believe the cemeteries offer plenty of options in ways to memorialize and mark the gravesite of the person for whom arrangements are made (71%). Only 13% feel there are too many restrictions or limitations, a 2% increase over 1995. [Figure 16]

The number of respondents who own cemetery property has not changed significantly in the past four years—approximately 50% of those interviewed own cemetery property. However, the reasons why people are purchasing cemetery plots are changing. While in 1995 *to assure location* (32%) was the most frequently cited reason for cemetery property purchases, in 1999 *others will not have to worry about it* (55%) edged out the location issue by three percent (52%). In the 1995 study, 28% of respondents indicated that the cemetery plot(s) were *inherited*, and 22% said property was purchased *following family tradition*. [Figure 17]

The most common reason given for not currently owning a cemetery plot remains *have never thought of purchasing/never thought about it* (26%). Other respondents *plan to be cremated* (18%), up from 16% in 1995, or simply *cannot afford cemetery property* (9%). [Figure 18]

Cremation

Cremation continues to grow in popularity as a method of disposition. This wave of tracking marks another increase in the number of respondents who would select cremation for themselves (46%) or for a loved one (46%). [Figure 19&20] Twenty-eight percent (28%) say they would *definitely* prefer cremation to earth burial, compared to 24% in 1995, and 20% in 1991. Twenty-six percent (26%) say they have been involved in making cremation arrangements (not asked in 1995 or 1991). The main reasons for choosing cremation are that it *saves money* (24%) and *saves land* (19%). [Figure 21]

THE FUNERAL SERVICE CONSUMER ASSISTANCE PROGRAM ...

- is grounded on the principle that the consumer are your own best advocates when you are well informed.
- can help you gain a better understanding and help resolve concerns about funeral service.
- provides consumer information, problem-solving resources and recommendations for action.

NOTE THAT FSCAP:

- DOES NOT ARBITRATE DISPUTES OR HAVE ENFORCEMENT OR DISCIPLINARY AUTHORITY OR GOVERN ANY ASPECT OF FUNERAL SERVICE INCLUDING PRENEED
- DOES NOT GIVE REFERRALS ABOUT INDIVIDUALS, FIRMS OR PRENEED PLANS
- DOES NOT PROVIDE ANY CERTIFIED COUNSELING

To receive a free copy of any of the following consumer assistance brochures, please call, write or fax FSCAP

- *Arranging a Funeral*
- *Understanding Grief*
- *Buyer's Guide to Preneed Funeral Planning*

*Brochures may be ordered in quantity.
Call for rates and details if you would like to
order additional brochures.*

F S C A P

P. O. Box 486
ELM GROVE, WI 53122-0486

Monday through Friday
8 a.m. to 4 p.m. (CST) at 1-800-662-7666
FAX 1-800-789-6977

A nonprofit consumer assistance service



Funeral Service Consumer Assistance Program

*Dedicated to increasing
consumer knowledge of
funeral service.*

WHAT IS FSCAP?

- A non-profit service created to assist consumers in matters involving funeral service
- The national funeral service consumer assistance program that is recognized by the Federal Trade Commission (FTC)
- A service that recognizes your right to clear, compassionate, and accurate information about funeral service
- A place to get information about understanding the process of grieving
- Assistance to help identify and address concerns about the quality of service you have received
- Free information, resources, and recommendations to steer you in the right direction to resolve concerns or complaints

WHAT ASSISTANCE?

- FSCAP service representatives are available to assist you Monday through Friday, 8 a.m. to 4 p.m. (CST) at 1-800-662-7666. Services of a FSCAP Intervener are also available if a FSCAP service representative is unable to help you.

WHAT SHOULD YOU DO?

- First make every reasonable attempt to personally communicate your concern or resolve the problem with the funeral home. Telephone, write or make an appointment to talk.

- Call the proper state governing agency or FSCAP if you have attempted to work with the funeral home and you are still not satisfied and need direction.
- Take action based on information suggested by the state or FSCAP to continue to resolve your problem.

WHAT CAN FSCAP DO FOR YOU?

- Provide INFORMATION through free brochures about preneed, making funeral arrangements, and understanding grief
- Locate RESOURCES and linkages to connect you to the proper authorities in your state that govern funeral service
- Offer RECOMMENDATIONS to steer you in the right direction to identify your need, address concerns or resolve problems

*You are your own best advocate.
When you do your "homework" first,
gather facts, listen attentively and
read and re-read any agreements
with special care. Ask questions and
pursue answers!*

Start here to find information about specific funeral topics

- How to File a Complaint / Rules and Regulations If your local library cannot help you, call FSCAP for the proper governing boards with the authority in your state to oversee and regulate preneed sales and contracts, funeral homes, funeral directors, and other related concerns.
- Bereavement/Grief/Mourning Contact place of worship, doctor, local hospice, or a funeral director for help. There may be local grief support groups. Write, fax or call FSCAP to ask for free brochure UNDERSTANDING GRIEF.
- Preplanning A Funeral (Preneed) Write, fax or call FSCAP to ask for free BUYER'S GUIDE TO PRENEED FUNERAL PLANNING.
- Financial Assistance to Pay for Funeral FSCAP is unaware of any group providing this service and recommends contacting family, friends, place of worship, and/or city or local agencies/organizations that may assist with this immediate need. Veteran, Social Security, or other death benefits may be available for eligible individuals: contact the VA or Social Security office near you for further information.
- Professional Services Fee (a definition) This fee is for basic professional services of the funeral director and staff and is in addition to the cost of funeral arrangements that you select. It is the funeral home's cost of doing business and may include services such as conducting the arrangement conference, securing necessary paperwork, coordinating arrangements among cemetery, crematory, or other parties, and overhead from various aspects of operating the business.
- Cemeteries Call the Cemetery Consumer Service Council (CCSC) at 1-703-379-6426 for your state CCSC Committee phone number.
- Cremation Send request and self-addressed #10 envelope with \$.78 postage for brochures including preneed info to Cremation Assn. of No. America (CANA), 401 N. Michigan Av, Chicago, IL 60611.
- Monuments Call Monument Builders of North America at 1-847-803-8800 or write MBNA, 3158 Des Plaines Av, #224, Des Plaines, IL 60018.

Call 1-800-662-7666 for FSCAP assistance!



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FUNERAL SERVICE
EDUCATIONAL FOUNDATION

Consumer Education Series Brochures

The Funeral Service Educational Foundation (FSEF) Resources offers you a wide variety of books, brochures, videos and audio tapes on topics ranging from children and grief to business management, public health and technical skills.

Our brochures are available in packets of 100. For pricing and for your free copy of one or more brochures contact FSEF at 877-402-5900, by [email](#) or fill in this [online form](#). Your free brochure(s) and pricing information will then be promptly sent to you.

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NFDA Caregiving Information

Here is some caregiving information that is useful to consumers and funeral professionals alike.

- [A Caring Response to an AIDS-Related Death](#)
- [Anatomical Gifts](#)
- [Children and Death](#)
- [Co-Worker Death](#)
- [Cremation](#)
- [Embalming](#)
- [Funeral Service and Hospice: Mutual Concern, Cooperation & Care](#)
- [Living With Dying](#)
- [Suicide](#)
- [When a Baby Has Died](#)
- [What Can We Do To Help?](#)
- [When the Holidays Hurt: 19 Ways to Ease the Pain](#)
- [Will I Ever Stop Hurting? A Parent's Grief](#)

The Funeral Service Educational Foundation also offers caregiving information in online and brochure format. Visit <http://www.nfda.org/fsef/brochures/index.html> for more information.

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- ▶ [National Kidney Foundation](#)
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- ▶ [Parents of Murdered Children](#)
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Funeral Price Information

From the NFDA 1999 General Price List Survey

NFDA's 1999 General Price List Survey results are based on figures from members General Price Lists as of January 1999. Data was collected from 829 questionnaire responses out of a total random sample of 2,600 NFDA members, an outstanding response rate of 32%. The survey is divided into two sections, services and merchandise. This is the **National Average**, for cost of services and merchandise, please contact your local funeral director for prices in your area.

The schedule of standard services and merchandise, which together may be considered the average cost of an adult funeral, are summarized below.

Most Commonly Selected Services:	Ave. Cost:
Professional service charges	\$1,182.31
Embalming	\$400.51
Other preparations (Cosmetology, hair, etc)	\$150.35
Visitation/Viewing	\$314.42
Funeral at Funeral Home	\$356.68
Transfer of remains to funeral home	\$158.66
Hearse (local)	\$179.08
Service car/van	\$87.42

Sub-total: \$2,829.43

Merchandise:

Acknowledgement cards:	\$14.47
Casket:	\$2,176.46

Sub-total: \$5020.36

Vault:

\$757.80

Total: \$5778.16

The above prices do not include cemetery charges, such as grave space.

opening/closing grave, crypts/mausoleum, monument or marker. These items are usually not purchased through the funeral home. Some funeral homes offer vaults, others do not, but we have included the cost of a vault for reference.

Cost of Services and Merchandise Provided by Funeral Directors

The Funeral or An Alternate to It

The following, according to the 1999 General Price List Survey, are the national ranges for services and merchandise following the FTC required itemization as of January 1999.

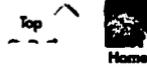
Services:

Professional service charges	\$963.15	to	\$1,289.95
Embalming	\$319.13	to	\$465.60
Other preparations (Cosmetology, hair, etc)	\$109.22	to	\$178.32
Visitation/Viewing	\$175.28	to	\$374.22
Funeral at Funeral Home	\$277.52	to	\$382.30
Memorial Service	\$311.00	to	\$405.79
Graveside Service	\$241.22	to	\$436.07
Transfer of remains to funeral home	\$117.00	to	\$175.48
Hearse (local)	\$135.71	to	\$196.30
Limousine (local)	\$69.17	to	\$172.54
Service car/van	\$65.56	to	\$133.99
Forwarding remains to another funeral home	\$1,074.13	to	\$1,339.27
Receiving remains from another funeral home	\$917.46	to	\$1,137.02
Direct Cremation (container provided by FH)	\$1,146.08	to	\$1,541.94
Immediate Burial (container provided by FH)	\$1,173.16	to	\$1,981.84

Merchandise:

Acknowledgement cards:	\$ 14.47	to	\$ 93.19
Caskets:			
Selected Woods	\$1,588.08	to	\$3,277.52
Selected Metals	\$880.03	to	\$6,227.69
Vaults	\$504.96	to	\$2,180.60

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Ensure Wise Decision-Making, Know The Facts

(NAPS)—There are many professionals who are called upon to help a family during difficult times. The obvious are a doctor and lawyer. Another important professional in the community is the funeral director. He or she will be able to offer help and guidance during one of life's most difficult times.

The funeral director can be called anytime, day or night, including holidays. If a death occurs away from home, your funeral director should be called to arrange the necessary preparation and transportation details.

Selecting A Funeral Home

This decision should be made the same way you would as when selecting any professional to handle something important for you. Choose a funeral home that has a good reputation in the community and one that is a member of the National Funeral Directors Association (NFDA). If you are unfamiliar with the funeral homes in your area, ask a relative, friend, hospice or clergy person or doctor for a recommendation, or call NFDA at 800-228-6332 for a listing of member funeral directors in your community.

Consider meeting with a few different funeral directors in advance to determine with whom you are comfortable and the range of services offered at a cost that meets your needs.

The funeral director can help a family create a ceremony that celebrates a life lived, which can be an important part of the healing process. He or she will also be able to coordinate the services of many community resources who also may provide additional support.

How Much Does A Funeral Cost?

Funeral costs will vary depending on the services and merchandise selections made. Under the Federal Trade Commission regulation, funeral directors will provide a general price list of itemized costs of all options offered by their funeral home at the time arrangements are first discussed or over the telephone if a consumer inquires about the costs.

"Consumers have control of how much they spend, and your funeral director will work to meet your personal wishes to stay within your financial means," says Robert Harden, NFDA Executive Director.



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NFDA Consumer Tips on Prepaying Your Funeral

1. Choose a licensed funeral director who has a good reputation in the community.
2. Make sure your funds are secured. Ask your funeral director how the funds are invested and check over time to ensure the funds are keeping pace with inflation.
3. Make sure your plan is flexible that you may be able to alter plans if you wish and/or may be transferred to a funeral director in another state in case you move.
4. Consider carefully before accepting an irrevocable agreement (a contract that cannot be canceled.) Irrevocable agreements are fine when eligibility for Supplemental Security Income (SSI), Medicaid or other public benefits are being determined but may limit your flexibility.
5. Have a family member sit in during arrangements to help plan.
6. Like any contract, before signing, reread it carefully and make sure you understand all the provisions. Ask questions.
7. Keep a copy of your plan in a safe place. Inform a close family member or friend that you have made arrangements and where the documents are kept.
8. Make sure everything you talk about is put in writing. Get copies for you and your family.

Note: See [Consumer Preneed Bill of Rights](#).

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Consumer Resources

National Funeral Directors Association Consumer Preneed Bill of Rights

Prior to purchasing any funeral goods or services or signing a preneed funeral contract, we urge you to ask us any and all questions you may have regarding your preneed purchases.

To ensure that you, as our client family, have a full understanding of the preneed funeral transaction, we guarantee the following rights and protections:

We will:

1. Provide you with detailed price lists of services and merchandise before you select services and merchandise.
2. Provide to you, at the conclusion of the funeral arrangement conference, a written statement listing all of the services and merchandise you have purchased and the price.
3. Give you a written preneed funeral contract explaining, in plain language, your rights and obligations.
4. Guarantee in the written preneed contract that if any of the merchandise or services you have selected are not available at the time of need, merchandise or services of equal or greater value will be substituted by us at no extra cost to you.
5. Explain in the written preneed contract the geographical boundaries of our service area and under what circumstances you can transfer the preneed contract to another funeral home if you were to relocate or if the death were to occur outside of our service area.
6. State in the written preneed contract where and how much of the funds you pay to us will be deposited until the funeral is provided.
7. Explain in the written preneed contract who will be responsible for

paying taxes on any income or interest generated by the preneed funds that are invested.

8. Inform you in the written contract whether and to what extent we are guaranteeing prices of the merchandise and services you are purchasing. If the prices are not guaranteed, we will explain to you in the written preneed contract who will be responsible for paying any additional amounts that may be due at the time of the funeral.
9. Explain in the written preneed contract who will receive any excess funds that may result if the income or interest generated by the invested preneed funds exceed future price increases in the funeral merchandise and services you have selected.
10. Explain in the written preneed contract whether and under what circumstances you may cancel your preneed contract and how much of the funds you paid to us will be refunded to you.

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FUNERAL SERVICE
EDUCATIONAL FOUNDATION

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The Funeral Service Educational Foundation Resources offers you a wide variety of books, videos and audio tapes on topics ranging from children and grief to business management, to public health and technical.

We offer funeral directors, and the communities they serve, educational, training and technical materials. We also offer grief-related and funeral planning consumer brochures that funeral directors can offer to their families.

Don't forget to check out the latest specials from FSEF Resources!

Attention funeral directors: Wouldn't it be nice if at the time of death all family members came to your firm knowing the wishes of their deceased loved ones and how the funeral expenses would be paid? [Click here to see how you can assist them!](#)

For a complimentary copy of our Catalog by mail, please call 877-402-5900 or send e-mail. A catalog will be sent to you in five working days.

Each order will include sales tax (for the states listed below) and shipping.

Shipping		Sales Tax	
Order Amount Charge		Illinois	6.25%
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\$50.01 - \$100	\$8	Michigan	6.0%
\$101 - \$150	\$10	Minnesota	6.5%
\$151 - \$200	\$12	North Carolina	6.0%
\$201 - \$250	\$15	Ohio	6.0%
\$251 - \$300	\$20	Wisconsin	5.0%
Over \$300	Call for Quotation		

All prices and shipping rates are subject to change without notice.



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▶ What is NFDA?

The National Funeral Directors Association (NFDA), founded in 1882, is the largest funeral service organization in the world. It is governed by a nine member Executive Board, a Policy Board made up of representatives from every state, and a House of Delegates. The number of delegates is based on the number of members in a state. NFDA's headquarters, staffed by approximately 40 employees, is in Brookfield, Wisconsin. In 1997, NFDA added a government relations office in Washington, DC to handle legislative and regulatory issues for its members.

▶ What is NFDA's mission?

The mission of NFDA is to enhance the funeral service profession and promote quality service to the consumer. NFDA is dedicated to fulfilling its mission by:

- Promoting national leadership and a national identity for the profession;
- Developing effective partnerships with State Associations; and
- Providing direct service to Practitioners.

▶ Who are NFDA's members?

The following points describe typical members of NFDA:

- Over 75% of NFDA members provide service to families in small towns or cities with populations of fewer than 50,000. Most, in fact, operate in rural towns with populations of fewer than 10,000.

- Ninety-three percent of NFDA members are small business owners/operators with an average of four full-time employees. The average member funeral home conducts about 160 services per year.
- Approximately 85% of NFDA member funeral homes are family owned and operated and average 57 years in business.

► **What are some basic funeral service facts?**

The following points demonstrate current funeral service facts:

- There are more than 22,100 funeral homes in the United States employing approximately 35,000 licensed funeral directors/embalmers and 89,000 additional funeral service and crematory personnel.
- There were 2,338,070 deaths in the United States during the 12-month period ending December, 1998, or 8.65 deaths per thousand population. (U.S. Department of Health & Human Services, 1998)
- Of more than 2.3 million deaths nationwide in 1998, nearly 76% resulted in earth burial or entombment and approximately 24% resulted in cremation.
- The average cost of a funeral from NFDA's 1999 General Price List survey is \$5,020.36 for an adult funeral.

► **What are some of the trends in funeral service?**

The following points highlight several of the current trends in funeral service, particularly those which impact the consumer:

- An increase in funeral home "aftercare" services, including support groups, remembrance services, community referrals and libraries.
- An increase in preplanning and prepayment of funerals.
- Increased government regulation, particularly in areas of occupational safety and health, often requiring the hiring of additional personnel in order to comply with the new regulations.
- More personalized service to accommodate the differing ideas of what is a traditional funeral and desires for various methods of disposition. Recent immigration trends mean funeral directors now serve people with differing funeral customs from all parts of the globe.
- An increase in the number of women and minorities entering the funeral service profession. For example, approximately one-third of current mortuary science enrollees are women.

- In many states, an increase in the educational requirements both to enter the profession and to retain a license.

► **How does NFDA help its members serve consumers better?**

In order to help funeral directors provide better service to families, NFDA does the following:

- Provides a voice in Washington, D.C., and prepares materials on compliance with various federal government laws and regulations.
- Produces and distributes educational materials and books, brochures and audiovisuals on dying, death, funeral customs and bereavement for funeral directors, educators and consumers through its Marketplace.
- Presents continuing education seminars at conferences and during its annual convention on topics related to public health, social science, business management, regulatory issues and funeral service ethics.
- Publishes a monthly magazine featuring educational articles.
- Conducts or funds research in areas of health, safety, the environment and consumer attitudes.
- Provides funding for funeral service education scholarships and research.
- Maintains affiliations with allied organizations in such fields as sociology, psychology, healthcare and theology.

► **How can I find out more information on funeral service and NFDA?**

For more information on funeral service or the National Funeral Directors Association, you can email us or contact us at:

National Funeral Directors
Association
13625 Bishop's Drive
Brookfield, WI 53005

Toll-free: 800-228-6332
Phone: 262-789-1880
Fax: 262-789-6977
E-mail: nfda@nfda.org

National Funeral Directors
Association
Washington DC Office
400 C Street, NE
Washington, DC 20002

Phone: 202-547-0441
Fax: 202-547-0726
E-mail: jfitch@nfda.org



**Highlights of Written Testimony Submitted to the U.S. Senate Special
Committee on Aging by the National Funeral Directors Association**

April 11, 2000

- The National Funeral Directors Association (NFDA) is the world's oldest and largest funeral service association representing nearly 14,000 funeral directors across the United States. The association provides its members with extensive education, government relations and communication programs and services.
- During the past 16 years that the federal Funeral Rule has been in effect, NFDA has recognized the rule provides benefits to consumers and funeral directors alike. The rule regulates the funeral service transaction and requires extensive price list disclosure to consumers prior to making funeral arrangements.
- NFDA has urged Congress and the Federal Trade Commission (FTC) to strengthen the Funeral Rule to protect all consumers regardless of where they purchase funeral goods or services. Presently, the rule does not apply to cemeteries, retail casket stores, the Internet or other providers of funeral goods and services.
- The Funeral Rule should be strengthened because of the significant changes in funeral service and consumer attitudes during the past 25 years. Consumers who shop at cemeteries, retail casket stores, on the Internet and with other third-party providers are not presently protected by the rule because these funeral service providers did not exist when the rule was first drafted.
- The NFDA has worked with the FTC on Funeral Rule compliance issues. Partly because of these efforts, some 90 percent of funeral homes visited by the FTC have been found to be in compliance with the Funeral Rule.
- In addition to the FTC, funeral home operations are also regulated by OSHA, EPA, Health and Human Services, Veterans Administration, ADA, Department of Labor and the IRS.
- The General Accounting Office (GAO) concludes that the level of consumer complaints regarding the funeral service profession is low.

(over)

- The Wirthlin Group consumer survey reports a 5:1 ratio of positive to negative consumer comments about funeral service. A 3:1 ratio is considered to be a healthy ratio for a typical industry.
- The three primary reasons a consumer selects a funeral home are the family's previous experience with the home, the location of the home, and the funeral home's reputation in the community, according to the Wirthlin Group survey of 1,000 consumers.
- The Funeral Service Consumer Assistance Program (FSCAP) is a FTC – recognized consumer assistance program that has helped to resolve consumer complaints about funeral service for the past two decades. FSCAP receives about 1,000 calls a year of which 23 percent are complaints and 77 percent are requests for consumer information. The program is administered by the Funeral Service Educational Foundation (FSEF).
- NFDA operates a wide range of employee training, consumer education, consumer service and community participation programs for funeral homes and funeral directors.
- NFDA serves as a resource in compiling state funeral regulations and facilitating the exchange of information among state associations of funeral directors. NFDA believes its partnership with state associations has resulted in a high level of compliance with federal, state, and local laws and regulations.



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N E W S R E L E A S E

Contact: Kelly Smith
 Andy Smith
 1-800-228-6332

For Immediate Release
 September 29, 1999
 99-31

FUNERAL COSTS NO LONGER ONE OF THE LARGER EXPENSES IN A LIFETIME

Increases in Funeral Goods and Services Lower Than Other Consumer Costs

WASHINGTON, D.C. — Contrary to popular perceptions over the years, the cost of remodeling a home, buying a car, throwing a wedding, educating your children, even some vacations and hobbies is much higher than the average cost of a funeral, according to the National Funeral Directors Association (NFDA).

The NFDA, which represents more than 14,000 funeral directors across the country, recently completed a survey of its members and found that the average cost of a funeral today is around \$5,000, not including burial costs. This is up only about five percent in the last two years, and according to the Consumer Price Index, is below the average increase for other goods and services during the same period.

"We are pleased that through this survey we can demonstrate that funeral prices are not only in line with, but are often lower than other goods and services needed by consumers," said Robert Harden, Executive Director of the NFDA.

- more -

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The survey also found that price increases are mostly in the service end of the business, rather than in the purchase of caskets, vaults and other merchandise. Harden said that more funeral directors are moving away from an emphasis on selling products and placing more emphasis on service, reflecting a trend toward more personalization in the rituals that memorialize a death.

"Families today are more interested in how a funeral director can help them create a personal and meaningful service than what kind of casket they purchase," said Harden.

The average professional service fee is about \$2,800, around \$60 per hour, for the time it takes to meet with and arrange all aspects of a funeral for a family. This can include removing and preparing the body, meeting with the family, planning the service, preparing for and staffing the funeral service, bringing the family to the service, transporting the remains to the chosen destination, completing all necessary paperwork, and being available around the clock as needed. This average hourly fee is on par with other skilled professionals, and is significantly lower than what lawyers or therapists charge for providing professional services.

The estimated average cost of a funeral was established by totaling the cost of a typically chosen casket, the professional service fee, plus nine additional service items such as embalming, visitation and the use of a hearse. The estimated cost **does not include** costs related to burial such as grave space or a headstone because these items are usually not purchased through the funeral home. The averages are taken from the reports of more than 800 funeral directors nationwide.

- more -

Funeral Costs / Page 3

The National Funeral Directors Association, headquartered in Brookfield, Wisconsin, a western suburb of Milwaukee, is the world's oldest and largest funeral service organization. The association is the national voice for more than 14,000 licensed funeral directors and provides extensive government relations, education and communication programs on behalf of the nation's funeral profession.

###



Facts About Funeral Service Prices

- ❖ The average cost of a funeral, not including burial costs, is approximately \$5,000, according to a 1999 NFDA survey of more than 800 funeral directors nationwide. This cost is based on the average prices of nine service items and a casket model selected by 50 percent or more of consumers. The NFDA does not survey cemetery costs because most of its members do not own cemeteries.
- ❖ The average cost of a funeral is much less expensive than many other significant life expenses such as weddings, cars, education, rent and mortgages.
- ❖ Funeral homes average profit dipped below nine percent in 1999, according to the Federated Funeral directors of America, a funeral service accounting firm in Springfield, Illinois, representing approximately 1,500 funeral homes.
- ❖ The average professional service fee charged by a funeral director is about \$2,800, or approximately \$60 an hour, for 45 hours, on average, of funeral service preparation. This includes removing and preparing the body; meeting with the family; planning the service; preparing for and staffing the funeral service; brining the family to the service; transporting the remains to the chosen destination; completing all the necessary paperwork; and being available around the clock as needed. The average hourly fee is on par with other skilled professionals, and is significantly lower than what lawyers or therapists charge for providing professional services.
- ❖ Because of the trend toward personalization in funeral rituals, many funeral directors help reduce consumer costs by packaging products and services to meet the particular preferences of families.
- ❖ Funeral homes are businesses that service the public in local communities and provide direct economic benefits to the community through staff salaries, purchases and taxes.

For more information contact:

Mr. Kelly Smith, NFDA Public Relations manager, 800-228-6332

Funeral Price Information
From the NFDA 1999 General Price List Survey

NFDA's 1999 General Price List Survey results are based on figures from members General Price Lists as of January 1999. Data was collected from 829 questionnaire responses out of a total random sample of 2,600 NFDA members, an outstanding response rate of 32%. The survey is divided into two sections, services and merchandise. This is the **National Average**, for cost of services and merchandise, please contact your local funeral director for prices in your area.

The schedule of standard services and merchandise, **which together may be considered the average cost of an adult funeral**, are summarized below.

Most Commonly Selected Services:	Ave. Cost:
Professional service charges	\$1,182.31
Embalming	\$ 400.51
Other preparations (Cosmetology, hair, etc)	\$ 150.35
Visitation/Viewing	\$ 314.42
Funeral at Funeral Home	\$ 356.68
Transfer of remains to funeral home	\$ 158.66
Hearse (local)	\$ 179.08
Service car/van	<u>\$ 87.42</u>
Sub-total:	\$2,829.43
 Merchandise:	
Acknowledgement cards:	\$ 14.47
Casket:	<u>\$2,176.46</u>
Sub-total:	\$5020.36
 Vault:	 <u>\$ 757.80</u>
Total:	\$5778.16

The above prices do not include cemetery charges, such as grave space, opening/closing grave, crypts/mausoleum, monument or marker. These items are usually not purchased through the funeral home. Some funeral homes offer vaults, others do not, but we have included the cost of a vault for reference.

National Funeral Directors Association
 13625 Bishop's Drive
 Brookfield, WI 53005-6607
 800-228-6332

**Cost of Services and Merchandise
Provided by Funeral Directors**

The Funeral or An Alternate to It

The following, according to the 1999 General Price List Survey, are the national ranges for services and merchandise following the FTC required itemization as of January 1999.

Services:

Professional service charges	\$963.15	to	\$1,289.95
Embalming	\$319.13	to	\$465.60
Other preparations (Cosmetology, hair, etc)	\$109.22	to	\$178.32
Visitation/Viewing	\$175.28	to	\$374.22
Funeral at Funeral Home	\$277.52	to	\$382.30
Memorial Service	\$311.00	to	\$405.79
Graveside Service	\$241.22	to	\$436.07
Transfer of remains to funeral home	\$117.00	to	\$175.48
Hearse (local)	\$135.71	to	\$196.30
Limousine (local)	\$69.17	to	\$172.54
Service car/van	\$65.56	to	\$133.99
Forwarding remains to another funeral home	\$1,074.13	to	\$1,339.27
Receiving remains from another funeral home	\$917.46	to	\$1,137.02
Direct Cremation (container provided by FH)	\$1,146.08	to	\$1,541.94
Immediate Burial (container provided by FH)	\$1,173.16	to	\$1,981.84

Merchandise:

Acknowledgement cards: \$ 14.47 to \$ 93.19

Caskets:

Selected Woods \$1,588.08 to \$3,277.52

Selected Metals \$880.03 to \$6,227.69

Vaults \$504.96 to 2,180.60

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Doc: GPL Report

Funeral Price Information
from the NFDA 1997 General Price List Survey

NFDA's 1997 General Price List Survey results are based on figures from members General Price Lists as of January, 1997. Data collected from 564 questionnaire responses out of a total random sample of 1,500 NFDA members, an outstanding response rate of 38%.

The schedule of standard items, which together may be considered the average cost of an adult funeral, are summarized below. Standard items are identified by survey respondents as those items selected by consumers more than half of the time.

Most Commonly Selected Items	Avg. Cost
1. Non-declinable professional service charges	\$1078.98
2. Embalming	\$ 369.51
3. Other preparation (cosmetology, hair, etc.)	\$ 132.92
4. Visitation/viewing	\$ 304.84
5. Funeral at funeral home	\$ 325.73
6. Transfer of remains to funeral home	\$ 134.17
7. Hearse (local)	\$ 161.24
8. Service Car/Van	\$ 80.76
9. Acknowledgement cards	<u>\$ 18.74</u>
Total:	\$2606.89

This year we asked our respondents to identify which caskets and vaults were most commonly selected by consumers more than half of the time.

10. Casket, 18 gauge steel, sealer, velvet interior	<u>\$2175.57</u>
Total with Casket	\$4782.46
11. Vault, asphalt coated concrete, sealer	<u>\$ 760.79</u>
Total with Casket & Vault	\$5543.25

The above prices do not include cemetery charges, such as grave space, opening/closing grave, crypts/mausoleum, monument or marker. These items are usually not purchased through the funeral home. Some funeral homes offer vaults, others do not, but we have included the cost of a vault for reference.



COMPARISON OF FUNERAL COSTS
1957-1998

YEAR	COST, ADULT SERVICE
1957	\$ 646
1958	661
1959	697
1960	708
1961	NO SURVEY
1962	NO SURVEY
1963	763
1964	757
1965	790
1966	NO SURVEY
1967	850
1968	879
1969	926
1970	NO SURVEY
1971	983
1972	1097
1973	1116
1974	1207
1975	1285
1976	NO SURVEY
1977	1412
1978	1522
1979	1653
1980	1809
1981	1949
1982	2138
1983	2247
1984	2457
1985	2737
1986-1988	NO SURVEY
1989	3392
1990	NO SURVEY
1991	3742
1992	4207
1993	4077
1994	4456
1995	4624
1996	4782
1998	5020

The above figures include professional service charges, transfer of remains to funeral home, embalming, other preparation, use of viewing facilities and facilities for ceremony, transportation and casket. They do not include vault, cemetery, monument or marker or miscellaneous items such as flowers, burial clothing or newspaper notices.

National Funeral Directors Association
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Facts About the National Funeral Directors Association

- ❖ The National Funeral Directors Association (NFDA) was founded in 1882. It is the world's oldest and largest organization representing funeral service.
- ❖ NFDA provides a national voice for the funeral service profession regarding key industry issues and provides extensive government relations, education and communications programs on behalf of the nation's funeral profession.
- ❖ NFDA represents nearly 14,000 funeral directors. Members include individuals affiliated with privately-owned funeral homes and individuals affiliated with publicly-held corporations.
- ❖ In addition to licensed funeral directors, NFDA's membership also includes apprentice funeral directors, retired funeral directors, and students studying mortuary science.
- ❖ NFDA is governed by a nine-member Executive Board, a Policy Board comprised of one representative from every state (akin to the U.S. Senate), and a House of Delegates with proportional representation (akin to the U.S. House). The association employs 42 full-time staff members.
- ❖ States typically have their own local funeral association (i.e. Wisconsin Funeral Directors Association) that works on state-specific issues regarding the funeral profession. NFDA works closely with state-level funeral associations on national issues that affect the funeral profession.
- ❖ NFDA's Convention & International Exposition is the largest annual event of its kind in the world. In addition, the association sponsors an annual Legislative Conference in Washington, D.C., an annual Leadership Conference in various cities across the country, and numerous professional training and educational seminars.
- ❖ **NFDA contact information:**
 13625 Bishop's Drive, Brookfield, WI 53005, west suburban Milwaukee
 Phone: 800-228-6332 Fax: 262-789-6977 Web site: www.nfda.org
Kelly Smith, Public Relations Manager, 262-814-1549
 (NFDA's Headquarters)
John Fitch, Director of Government Relations, 202-547-0441
 (NFDA's Washington, D.C. office)

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Facts About Death Rates

- In 1997, there were 2,294,000 deaths in the United States, roughly 117,000 fewer than in 1996, according to the National Center for Health Statistics.
- The 1997 U.S. death rate was 8.6 per 1,000 people. This rate has remained fairly constant since 1980, varying between 8.5 to 9.0 per 1,000 people.
- The U.S. death rate has decreased for people 15 to 24 years of age and 75 to 84 years of age.
- The U.S. death rate will increase in the new millennium as a result of the aging baby boomer generation and a growing population overall. By 2020, the death rate is expected to increase to 10.2 per 1,000 people and to 12.8 per 1,000 people by 2040.
- The average life expectancy in 1991 was 79 years for a woman and 72 years for a man, according to U.S. Census Bureau statistics. In comparison, the average life expectancy in 1958 was 68 years for men and women.
- In approximately 80 percent of deaths, caskets are used in conjunction with some form of a ritual or ceremony, according to the Casket & Funeral Supply Association.
- Despite the wide use of caskets, the use of cremation services is on the rise, according to the Cremation Association of North America (CANA). In 1996, cremation was chosen in approximately 21 percent of deaths compared to 1997 when it was selected in 24 percent of deaths.
- Families are getting more involved in planning and customizing a funeral than in the past, with personalization and individual choices creating a more meaningful connection for survivors.

For more information contact:

Mr. Kelly Smith, NFDA Public Relations Manager, 800-228-6332



Facts About the Funeral Service Profession

- Being a funeral director is about caring for families. There are nearly 22,000 funeral homes in the United States, serving families in every geographic area of the country.
- According to the 1992 U.S. Census of Service Industries, more than 15,000 funeral homes have payrolls beyond the owners. These funeral homes employ roughly 124,000 individuals, creating a significant economic impact.
- Eighty-seven percent, or 19,000 of these funeral homes, are owned by individuals, families, or closely-held private corporations, and average 54 years in the funeral profession.
- Thirteen percent, or 3,000 of these funeral homes, are owned by one of five publicly-traded stock corporations.
- The average funeral home handles 159 calls per year. Some smaller funeral homes handle fewer than fifty calls per year and are often run by a husband and wife team. Some larger funeral homes handle thousands of calls per year.
- Based on NFDA membership, the average funeral home has three full-time and three part-time employees.

For more information contact:

Mr. Kelly Smith, NFDA Public Relations Manager, 800-228-6332



**Federal Trade Commission Funeral Rule Review
NFDA Key Positions**

- Strengthen the Funeral Rule to be more inclusive and cover all sellers of funeral goods or services, as presently defined by law, to effectively protect all consumers.
- Modify General Price List distribution requirements in order to recognize the sensitivity of serving survivors who are experiencing the death of a family member.
- Oppose any restrictions on the rights of funeral directors to offer discounts and package incentives, which can help consumers in their time of need.
- Oppose any modification or elimination of basic professional service fees. Funeral directors provide a considerable and essential amount of personal service to families, from planning the service to handling all kinds of details with hospitals, hospices and local authorities to preparing the body. They also provide a place to hold visitation or a service and have vehicles to transport the body.
- Eliminate the graveside funeral from the definition of immediate burial. Consumers who opt for immediate burial should not be compelled to purchase a graveside funeral service if they do not want one.
- Obtain guidance from the Federal Trade Commission (FTC) on funeral homes' handling of third party merchandise such as caskets sold in retail casket stores to ensure fair practices for all consumers.
- Obtain acknowledgment in the Funeral Rule that funeral directors may require the purchase of certain goods and services that are a "practical necessity."
- Modify the wording of the basic professional service fee disclosure to ensure consumers understand the nature of the services that funeral directors provide.
- Modify the cash advance provisions to exclude rebates and volume discounts as mark ups on cash-advance items.

For more information contact:

Mr. Kelly Smith, NFDA Public Relations Manager, 800-228-6332



NFDA Key Positions on the General Accounting Office Funeral-Related Industries Report

- On October 21, 1999, Senator Charles Grassley, R-Iowa, chairman of the Senate Special Committee on Aging, announced the release of a General Accounting Office (GAO) report on funeral-related industries.
- NFDA looks forward to working with Congress, consumer groups and regulatory agencies in discussions and decisions regarding the General Accounting Office report in efforts to provide maximum protection to funeral service consumers and fair treatment to funeral directors.
- The GAO report cites Federal Trade Commission (FTC) data indicating that 85 to 90 percent of funeral homes in the United States comply with the FTC's Funeral Rule, the primary federal trade rule that regulates price and product disclosures of funeral goods and services offered consumers by funeral homes.
- The GAO report cites data from the Better Business Bureau, other consumers' organizations and state regulatory authorities, indicating that funeral homes have a very low level of consumer complaints when compared to other businesses or professions.
- A funeral is no longer one of a family's most costly expenditures. The average cost of a funeral is between \$5,000 and \$5,700, not including burial or cremation costs, which is less than the average cost of a wedding, automobile, tuition for college education, and many home remodeling projects.
- Any proposed federal regulations of the solicitation, sales and terms and conditions of preplanning or prepaying funeral arrangements should provide maximum protection to consumers and treat all funeral directors and funeral homes fairly.
- NFDA urges strengthening of the Funeral Rule in order to insure that consumers receive equal protection regardless of where they shop for funeral goods or services.



Facts About Pre-Need Funeral Arrangements

- Pre-need is the consumer option to plan and pay for funeral arrangements in advance.
- Pre-need funeral arrangements can offer peace of mind to individuals who are concerned about their family making logistical arrangements during a difficult time. Pre-need arrangements can also lessen the financial burden on a family.
- Pre-need funeral arrangements can reduce funeral costs by paying today's prices for a funeral that will take place in the future. Furthermore, pre-payment agreements are often more available and economical than insurance programs, particularly for older Americans.
- Pre-planning or pre-paying for funeral services is a two step process: 1) planning the funeral arrangements with a funeral director and 2) paying the funeral home for the pre-planned funeral, usually through a trust agreement or insurance policy.
- Approximately 1/3 of the nearly two million funerals in the United States annually are pre-planned and pre-paid. An estimated 60 percent of these pre-planning agreements are paid for through trusts. The remaining 40 percent are paid for through insurance plans.
- Federal regulations for pre-need funeral arrangements require that prices for services and products are disclosed to the consumer before selecting a particular pre-paid funeral contract. The pre-paid funeral agreement usually spells out the services and merchandise the funeral home will provide when the death occurs. This includes staff's professional services, removal of the body, transportation services, embalming, visitation, funeral and committal services and a casket, vault and urn.
- Consumers are typically given the option of having the price of the funeral goods and services "guaranteed," meaning the consumer will not pay any additional costs to cover future increases in funeral prices.
- Pre-paid funeral agreements may also include "cash advance" items (i.e., flowers, clergy, honorarium, newspaper obituary and/or death certificate costs) that the funeral home pays to third parties. Since the funeral home has no control over price increases on these items, pre-paid funeral agreements rarely guarantee the price of cash advance items.
- In addition to funeral homes, many cemeteries and retail casket stores offer pre-need agreements. However, unlike funeral homes, these providers are often unlicensed and unregulated. This can result in higher prices and consumer protection issues with contract agreements.

For more information contact:

Mr. Kelly Smith, NFDA Public Relations Manager, 800-228-6332



Code of Ethics

 As funeral directors, we herewith fully acknowledge our individual and collective obligations to the public, especially to those we serve, and our mutual responsibilities for the benefit of the funeral service profession.

 To the public, we pledge vigilant support of public health laws; proper legal regulations for the members of our profession; devotion to high moral and service standards; conduct befitting good citizens; and honesty in all offerings of funeral service and in all business transactions.

 To those we serve, we pledge confidential business and professional relationships; cooperation with the customs of all religions and creeds; observance of all respect due the deceased; high standards of competence and dignity in the conduct of all service; and truthful representation of all funeral service offerings.

 To our profession, we pledge support of high educational standards and licensing laws; encouragement of scientific research; adherence to sound business practices; adoption of improved techniques; observance of legal standards of competition; and maintenance of favorable personnel relations.

 We subscribe to the principles set forth in the Code of Ethics of the National Funeral Directors Association and pledge our best efforts to make them effective.

 National Funeral Directors Association
13625 Bishop's Drive
Brookfield, WI 53005-6607



Consumer Preneed Bill of Rights

Prior to purchasing any funeral goods or services or signing a preneed funeral contract, we urge you to ask us any and all questions you may have regarding your preneed purchases.

To ensure that you, as our client family, have a full understanding of the preneed funeral transaction, we guarantee the following rights and protections.

We will:

-  Provide you with detailed price lists of services and merchandise before you select services and merchandise.
-  Provide to you, at the conclusion of the funeral arrangement conference, a written statement listing all of the services and merchandise you have purchased and the price.
-  Give you a written preneed funeral contract explaining, in plain language, your rights and obligations.
-  Guarantee in the written preneed contract that if any of the merchandise or services you have selected are not available at the time of need, merchandise or services of equal or greater value will be substituted by us at no extra cost to you.
-  Explain in the written preneed contract the geographical boundaries of our service area and under what circumstances you can transfer the preneed contract to another funeral home if you were to relocate or if the death were to occur outside of our service area.
-  State in the written preneed contract where and how much of the funds you pay to us will be deposited until the funeral is provided.
-  Explain in the written preneed contract who will be responsible for paying taxes on any income or interest generated by the preneed funds that are invested.
-  Inform you in the written contract whether and to what extent we are guaranteeing prices of the merchandise and services you are purchasing. If the prices are not guaranteed, we will explain to you in the written preneed contract who will be responsible for paying any additional amounts that may be due at the time of the funeral.
-  Explain in the written preneed contract who will receive any excess funds that may result if the income or interest generated by the invested preneed funds exceed future price increases in the funeral merchandise and services you have selected.
-  Explain in the written preneed contract whether and under what circumstances you may cancel your preneed contract and how much of the funds you paid to us will be refunded to you.

 PO Box 27641
Milwaukee, WI 53227-0641

The CHAIRMAN. OK. Well, thank you very much.
Mr. Elvig.

STATEMENT OF PAUL ELVIG, ON BEHALF OF THE INTERNATIONAL CEMETERY AND FUNERAL ASSOCIATION, RESTON, VA

Mr. ELVIG. Senator Grassley and Senator Breaux, we thank you for this opportunity today. I am representing the International Cemetery and Funeral Association. My name is Paul Elvig. And the reason we thank you for this opportunity is that the testimony that we did hear yesterday and the testimony that we are hearing today dramatizes that people are able to have access to a system of redressing their complaints and expressing their grievances. It is healthy to have that environment.

My background, I have been in this business for 32 years both as a provider and as a regulator. For 12 years, I served as the regulator of funeral homes and cemeteries in the State of Washington, and I am the past president of the National Cemetery Regulators Association. In that role and in the role as a provider, I have had the unique opportunity to see both sides of the avenue, both sides of the profession.

I am very concerned that this committee have the opportunity to have recommended guidelines that have been prepared by a profession that we advocate to the States. We have supplied to the staff of this committee recommended guidelines covering approximately 20 areas of interest to the consumer. We suggest these guidelines be used as recommendations, but we do not suggest that they be imposed as law in various States, but we do recommend them as guidelines in the area of pre-need contracts, endowment care funds, insurance-funded pre-arrangements, cemetery and funeral home combinations, prepaid trust funds, alternatives to trusting, financial instruments, authorization of control for final disposition, the cure period for violations, a glossary of terms. Oh, do we need a glossary of terms because I have heard so many here in the last several days now.

We have guidelines on solicitation, consumer guarantee fund, conversion of prepaid contract trust funds to insurance, and criteria for establishing new cemeteries, memorial sales and installations, recordkeeping requirements, handling of human remains, in conjunction with final disposition. These are guidelines that we have prepared and we offer up as guidelines to any State wishing to consider them.

Now, concerning the very issue of the States and their roles as regulators, allow me to suggest that the States are the place where the action should be. I have been the one in the International Cemetery and Funeral Association who conducted the survey of State law that is back-up material in our written comments. Allow me to say this: As we have gathered State law from around this country, one thing we discovered early on is that the law changes in the various States so constantly that drawing a line in the sand saying this is what State laws are all about is not possible. It is a constant evolutionary process, and the reason is that the needs of the various States vary so broadly and the industry is changing so quickly that the legislatures are responding constantly.

Whether or not we are talking about burial in Alaska, where it is not possible to do so for 6 months out of the year, or we are talking about cremation in Washington State, which runs 60 percent, or we are talking about ground burial in Louisiana where there is a water issue in many, many cases, or whether we are talking about density of population in New York City, we find that the ability of State legislatures to address these issues is critical. And, therefore, we prepared guidelines for these legislatures to consider based on the uniqueness of their particular situation.

This committee has heard reference made to portability, portability of pre-arrangement contracts. Portability is an interesting issue, and there are many definition matters there. Portability is as complicated as the portability of airline tickets. I know because I have tried to transfer tickets from one carrier to another. And allow me to say it is not just simply transferring a pre-arrangement account from funeral home A to funeral home Z in another State.

That is why definitions are so important. When you talk about pre-arrangement contracts, what are we talking about? Are we talking about a pre-purchased burial site? Are we talking about pre-purchased burial products—markers and vaults? Are we talking about pre-purchased funeral services and goods? Are we talking about trust funds?

When we talk about portability, we are talking about an array of products and services that many times are considered for transport to another area 20 and 30 years after purchase, when even the product itself goes through an evolution.

So as we look at portability, we would ask that the ICFA be included in any discussion defining portability. It is critical to the consumer, critical to the industry, that as we travel the portability road, we do so with some very definite and well-understood provisions.

Now, I heard yesterday attacks made on pre-arrangements, and, frankly, I resented it. I am not a pre-arrangement seller. I have never been door to door selling. But I want to tell you this: I buried my father 3 years ago, and if it wasn't for the pre-arrangements that my mother and I had for my Dad, even having been in this business, numbed by his loss, without those pre-arrangements we would have had little guidance in our own family life.

And I want to say this: As we talk about people who have been hurt by the industry, by the unscrupulous, those hurts can be avoided by pre-arrangements, pre-need arrangements, pre-paid arrangements. Those things protect consumers.

When you make a pre-arrangement and you pre-pay for it and you do so in sound mind and body, sound finance, you do so under the best advantages you could hope to have as a consumer. I am a strong advocate of pre-arrangement. I am a strong advocate of the pre-arrangement that is pre-paid. And I believe, having been a regulator, that the amount of abuse in the area of pre-arranged contracts is so small that it is difficult to chart on charts like some that we have just seen.

Pre-arrangement contracts assure the public, assure the consumer, assure each person who is going to face the certainty of death that they can control the events around it. The ability to con-

trol your death arrangements is so critical. I don't know if you have had the privilege that I have had of talking to people who have come to me and looked me in the eye, sick, filled with cancer, fearful of what is going to happen in the beyond, but wanting to know that they can pre-pay and pre-set aside funds to handle their arrangements.

If there were restrictions in these areas, restrictions that disallowed funeral homes and cemeteries to meet these requests, we would be telling these consumers, Forget it.

So I am here to say that those who have attacked the pre-need industry, those who have attacked the arrangement of pre-paid funerals and cemetery arrangements are misinformed, misdirected, and, frankly, providing a mis-service to the public.

My father, when he went into the rest home, in order to qualify for Medicare and Medicaid, needed to bring his personal assets down to a level that wouldn't throw Mom out of her house in Bellingham, WA. But instead we were able to be able to set aside his pre-arrangements. We were able to fund them—with a competing funeral home, by the way, to our firm in that community. And we were thrilled that we could do it. And I would not want to deny any person on this panel or in this room that opportunity to have those kind of arrangements.

Now, Senator, finally, I would like to conclude on the subject of complaints. We have to take strong exception to the GAO report and to those who say that people are too embarrassed to complain. We take strong exception to the notion that people won't complain. We take strong exception to the statements that say in general that people are just not going to complain about an irregularity in their funeral or their cemetery arrangement.

Quite the contrary, I have answered the phone many a time in my State, and I have listened to people complain not with apology, but with anger, and those complaints have varied from the height of the grass and the lawn of the cemetery to misspelling on markers, to the wrong color of casket, color selection in a casket, to even what the minister had said at a funeral. People don't hesitate to complain.

AARP in 1988 put an article in their newsletter asking people, their millions of members, to offer their complaints for the FTC hearing. Fifty-five complaints were produced. We have seen toll-free numbers. Attorney general's offices have folders on death and dying in which they list agencies and remedies you can find.

This hearing produces the notion in the media that you can complain. I reject, the industry rejects thoroughly, the notion that people are fearful of complaining. It just isn't so.

What is so is that the amount of complaints filed over funeral and cemetery deliveries is so small that it is difficult to measure on pie charts like you just saw here, and that says something. That says to me that the people who are providing funeral and cemetery goods and services have to provide it in a community where referral is survival. And without referral, without Mr. Jacobson getting a decent referral in his State, without referral, we are out of business. And that is not an attractive proposal.

I would say this: Having been a regulator who personally arranged for the incarceration of two individuals who violated our

trust laws, the prosecutors of these States, the regulatory agencies of these States are in a position to enforce the law. They enforce it. The mere fact that you had to take testimony yesterday from a man behind bars says the system works.

Senators, we are proud of that system, and we are proud of what you are doing here today. You are providing people a real public service. Thank you now.

[The prepared statement of Mr. Elvig follows:]



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Statement of Paul M. Elvig

On Behalf of the International Cemetery and Funeral Association

Regarding Funeral, Burial, and Preneed Sales Practices

Before the Special Committee on Aging

U.S. Senate

April 11, 2000

6 5 - 2 1 9

GUARDIANS OF A NATION'S HERITAGE

Chairman Grassley, Senator Breaux, and Members of the Committee:

The International Cemetery and Funeral Association (ICFA) appreciates this opportunity to appear before the Committee to discuss allegations involving improper funeral, burial, and preneed sales practices, and to answer any questions you may have. Your March 15th letter of invitation specifically listed four areas of interest and our written testimony has been organized to address each of these subjects as follows.

1. The Structure, Role and Mission of the ICFA

The ICFA is a nonprofit trade association founded in 1887 and currently has over 5,000 members located primarily in the United States, and in 28 foreign countries. The Association represents for profit, nonprofit, religious and municipal cemeteries, funeral homes, crematories, and retail monument dealers who promote consumer choices, prearrangement, and open competition. The ICFA sponsors a variety of educational conferences, an annual convention and trade show, and the ICFA University at the Memphis State for advanced management studies. The Association operates the Cemetery Consumer Service Council, an industry-sponsored consumer assistance organization established in 1979, to assist consumers with questions and to informally mediate complaints against cemeteries. We also cooperate with the Funeral Service Consumer Assistance Program, an industry-sponsored organization offering mediation services without charge to funeral home consumers.

The ICFA believes that consumer education is the key to consumer protection. There exists a wide variety of options and price ranges for consumers to consider in making final arrangements, either for themselves or for others. This information is widely disseminated by industry members, consumer groups, memorial societies and, increasingly, through the internet. The types arrangements selected will vary according to each individual based on his or her personal preferences, ethnic background, and religious beliefs. Obviously, these decisions should not be made under the stress and bereavement of a death, or even of an imminent death, in the absence of adequate thought and planning. The greatest challenge confronting the goal of consumer protection is the necessity for consumers to explore their options before the need arises.

2. The Issues ICFA's Members Face in Complying with the Myriad of State Laws that Apply to Each of Them

The ICFA believes that state level regulation of the industries is considerably more effective and more efficient than similar federal regulation because cemetery and funeral home consumer transactions are local in nature. While the specific regulation of cemeteries and funeral homes has historically occurred at the state level, an increasing number of businesses must comply with federal and state laws covering the same issue. For example, cemeteries and funeral homes in Florida are subject to the FTC's three-day "Cooling Off" Rule in addition to the state's 30-day "Cooling Off" period for prearrangements. Common sense may dictate that sellers should simply observe the longer time frame but, in fact, they must comply with the requirements of both state and federal laws. Since we believe that few state laws would be preempted by similar federal regulation, the ICFA is concerned with confusing and duplicative oversight.

In 1997, after a two-year effort, the ICFA published a Survey of State Cemetery and Mortuary Laws and Regulations with the cooperation of many state funeral and cemetery boards. Due to the volume of continuous amendments to strengthen these laws by state legislatures, the survey became outdated almost as soon as it was published. Efforts to keep the survey updated proved difficult and an entirely new survey is now in development following the mid-year adjournment of many state legislatures.

The ICFA Survey¹ nevertheless demonstrates the extent of state regulation affecting the allied industries. No doubt selected states should consider additional regulation or enforcement on given issues but, overall, 48 states have laws regulating cemeteries and 49 states have laws regulating funeral homes. In an effort to determine the extent of industry regulation at the state level, last year the ICFA collected copies of all relevant states laws, numbering approximately 10,000 pages, and a summary of citations to those laws, numbering approximately 30 pages. In terms of sheer volume, this data highlights the fallacy of claims by industry critics that there are "no state laws" regulating the cemetery and funeral home industries.

Perhaps due to this misinformation, often repeated by the media, members of the public may be unaware that most reported acts of misconduct are already against the law. For example, based on poor reporting consumers may not realize that it is already illegal to sell a cemetery lot to more than one customer; it is already illegal to disinter human remains in order to resell the grave, or to rebury the remains without authorization from the next of kin. It is already illegal to

¹ ICFA Survey of State Cemetery and Mortuary Laws and Regulations (attached).

unethically dispose of cremated remains. It is already illegal to invest or withdraw and spend trust funds in violation of the trust agreement, or the contract with the consumer, or state law. These violations, few and far between, seem to comprise the majority of the incidents reported in the media.

These acts of misconduct and deception also violate the ICFA Code of Ethics which is subscribed to by the 5,000 members of this Association.² Violation of the Code not only results in expulsion from the ICFA but the Code itself provides that the wrongdoing will be reported to the appropriate law enforcement authorities.

3. How ICFA Acts on Behalf of Its Members to Resolve Consumer Complaints

The ICFA, through its cooperative efforts with state associations, the Better Business Bureaus, and state/county consumer protection agencies, has been successful in resolving most consumer complaints. In fact, the only consumer complaints we cannot attempt to resolve are the ones we don't know about. In this regard, we have proposed a joint venture between AARP and the ICFA to mutually share and resolve consumer complaints but, to date, without success.

In order to track consumer cemetery complaints, and to have the opportunity of informally resolving many of them where possible, the ICFA has served as administrator for the Cemetery Consumer Service Council (CCSC) since 1979. The CCSC is an industry sponsored consumer assistance organization where industry members volunteer their time and experience to answer

² ICFA Code of Ethics (Attached).

inquiries and to mediate complaints involving cemeteries at no charge to the consumer. Each year the CCSC publishes an activity survey of inquiries and complaints received, a breakdown of the types of complaints and inquiries, and the number resolved. The CCSC also works with state cemetery boards, consumer protection agencies, and the Better Business Bureaus, all of which provide referrals to the CCSC. The Consumer's Resource Handbook, a U.S. Government publication that is circulated to public libraries and consumer assistance agencies throughout the nation, also lists the CCSC.

Through CCSC, the ICFA is able to investigate complaints against all cemeteries, not merely those entities belonging to the Association. While participation is voluntary for both the consumer and the cemetery, it is extremely rare for a cemetery to refuse to cooperate. Complaints are often resolved through an exchange of telephone calls.

Activity survey data for 1998, the latest year for which statistics are available, indicate that a total of 77 complaints and inquiries were processed by the CCSC - admittedly a low number compared with previous years that average between 100 and 150 complaints and inquiries. Of the 77 complaints received, 70 were resolved. Seven complaints and inquiries were pending at the beginning of the year while 10 remained at year's end. These figures were based on responses provided by 22 of the 38 state CCSC committees. Of the various types of complaints and inquiries received, 42 dealt with improper cemetery maintenance, 7 dealt with deceptive or questionable sales practices, 2 with Truth-in-Lending matters and other contractual issues, 15 with cemetery rules and regulations, and another 9 with a variety of other issues including simple

inquiries into cemetery practices.³

In an effort to place the volume and types of complaints received by the ICFA into perspective, last year the ICFA filed a Freedom of Information Act request with the Federal Trade Commission seeking access to any complaints involving cemeteries that were filed with the Commission during the last four years. It should be noted that the ICFA's request was not limited to "consumer" complaints alone. In response, the FTC staff stated, "A search of the Commission's records and discussions with knowledgeable staff failed to locate any records that are responsive to your request."⁴ (Emphasis added). By comparison, a recent FTC news release stated that the agency had received a total of 60,000 consumer complaints in 1998.⁵

Subsequently, the FTC contacted ICFA in January of this year stating that it had found approximately 30 complaints relating to cemeteries during the period from September 1997 to the present. Analysis of the complaint summaries provided to the ICFA revealed that only 26 incidents appeared to be involved - a rate of less than one complaint per month on a national level - and a few of those evidently did not involve cemeteries in the first place. Our analysis of these complaints is attached and indicate that where potential harm may have occurred, existing regulatory enforcement at the state level already address these concerns.

³ Cemetery Consumer Service Council Activity Survey Results and Press Release for the years 1994 through 1998 (Attached).

⁴ FTC Staff letter to ICFA General Counsel, dated May 3, 1999. (Attached).

⁵ FTC News Release, "Now Consumers Can Tell It To The FTC - Toll-Free," dated July 7, 1999. (Attached).

The GAO Investigation

Last October, this Committee published an investigative report into funeral-related industries by the U.S. General Accounting Office (GAO). The ICFA publicly welcomed this investigation as an objective effort to separate fact from fiction, and real data from innuendo. Media reports in the last few years have highlighted incidents of misconduct by funeral homes, cemeteries, crematories and other sellers that are indefensible and, not surprisingly, already illegal under state and federal laws. However, these anecdotal reports fail to convey any pattern of conduct or overall experience level of consumers in general towards the allied industries.

To the best of our knowledge, the GAO investigation was the first systematic effort by an objective fact-finder to establish whether acts of misconduct by industry members were isolated events or common practice. The report focused on four states with the highest annual number of deaths (California, Florida, New York, and Texas) and Maryland because it had recently established a new regulatory agency. Available data from a variety of sources contacted by the GAO indicated a range of concerns but few complaints. Since consumers can complain to a number of different organizations, the GAO speculated that any total volume could be overstated.

Of particular interest, the GAO report speculated that the lack of any significant volume of recorded complaints may be due to the fact that consumers are satisfied. However, the report also surmised that consumers may be inhibited to complain due to embarrassment or ignorance. While this theory may account for a small percentage of consumers, we believe that plain mathematics fails to support this idea. For example, with the U.S. Census Bureau reporting 2.3

million deaths in the United States during 1998, the number of consumers who have had first-hand experience dealing with funeral homes, cemeteries, and other sellers for the 5,500 burials or other forms of dispositions made each day is huge.

If only ten percent of the 5,500 individuals or families who arrange funerals and burials each day felt exploited by industry members, this would equal in excess of 2 million people within a ten year time period. Without the need to file formal complaints, the simple word-of-mouth experiences would produce a scandal of epic proportions making a GAO investigation - or a hearing such as this - superfluous.

4. **A Detailed Description of Any Programs ICFA has Established in an Effort to Protect Funeral, Cemetery, and Preneed Sales Consumers**

In addition to the work of the Cemetery Consumer Service Council described above, the ICFA has also published a voluminous series of detailed questions and answers concerning industry practices, policies, and related consumer issues and choices. This data is available on the ICFA website at www.icfa.org under the heading of "Consumer Resources."

The ICFA has also spearheaded efforts to encourage states to enact pro-active legislation mandating sound business practices and consumer protection. **The ICFA Model Guidelines for State Laws and Regulations⁶** were initially published in October 1998 as a series of 14 detailed issue papers summarizing various topics and providing principles for drafting legislation. The

⁶ A copy of the ICFA Model Guidelines for State Laws and Regulations with attached economic study, consumer survey and 27 guidelines have been furnished to Committee staff.

ICFA also commissioned an economic study of minimum prepaid trust deposit requirements to assure seller performance and a consumer satisfaction survey to accompany the Guidelines. Individual guidelines include topics on Prepaid Contracts, Endowment Care Trust Funds, Insurance-Funded Prearrangements, Cemetery and Funeral Home Combinations, Prepaid Contract Trust Funds, Alternatives to Trusting - Financial Instruments, Authorization to Control Final Disposition, and Cure Period for Violations, among others. A Glossary of Terms was also developed.

Subsequently, a number of additional model guidelines were published in June and November 1999 that include the following topics: Solicitation, Consumer Guarantee Fund, Conversion of Prepaid Contract Trust Funds to Insurance, Criteria for Establishing a New Cemetery, Memorial Sales and Installation, Record Keeping Requirements, and Handling Human Remains in Conjunction with Final Disposition.

The model guidelines are intended to help raise the level of debate concerning proposed state legislation from a largely anecdotal basis to one in which statistical and actuarial data will add substance to the discussions. The guidelines are advisory in nature and set out concepts rather than precise statutory language. The ICFA does not recommend codifying the various guidelines into law as a whole. Instead, the guidelines are intended as a series of options to be selectively chosen by interested parties to address particular concerns.

The ICFA has made copies of the Model Guidelines available at no charge to all state regulatory boards, the North American Cemetery Regulators Association, the Federal Trade Commission, state cemetery and funeral directors associations, all the national trade associations belonging to the Funeral and Memorial Information Council, selected consumer advocacy organizations, and others. We urge the Committee to review the Model Guidelines and promote their use at the state level.

Tracking Consumer Issues

In addition, the ICFA tracks survey data from a variety of consumer and industry groups to determine whether there exists emerging patterns of abuse. Survey data collected in recent years suggest that consumers, under the somber circumstances involved, have a positive perception of the industry. For example, a 1995 study was conducted by the University of Kansas Medical Center on Aging (funded through an AARP grant) among families that experienced the death of a loved one, age 50 or older, within the previous five months. Of the 163 families surveyed, one-third had no previous experience with funeral homes while 46 percent had no previous experience with cemeteries. Asked whether they were treated with respect, dignity, and concern at the funeral home, 94 percent said that they were "treated very well."⁷

Other aspects of the University of Kansas study corroborate findings made by the respected Wirthlin polling organization in three industry-sponsored telephone surveys. A benchmark national survey conducted in 1990 polled 1,000 consumers on their experience with

⁷ Funeral Related Options and Costs, A Guide for Families. The Funeral Information Project, Center on Aging, University of Kansas Medical Center. Kansas City, 1996, at page 11. (Attached).

and attitudes toward the industry. Sixty-five percent had positive remarks about industry members while only 11 percent mentioned anything negative.⁸ Three out of four believed that prearranging their own funeral or burial made good sense and over half, 53 percent, already owned cemetery property. More than one in four had already preplanned their own funeral and over half of that number had prepaid them.

The Wirthlin Group conducted a follow-up national telephone survey in 1995 among 1,000 consumers and found, among other things, that 68 percent of those surveyed at that time had positive remarks about industry members while only 15 percent had negative remarks.⁹ Among other things, 80 percent believed that prearrangement was a good idea. However, the survey indicated that only 24 percent had actually prearranged their funeral or burial plans. As in the 1990 survey, just over half of that number, 58 percent, had prepaid them.

Wirthlin has published a new survey this year finding that consumers' positive ratings of the industry has increased to 69%, up from 68% and 65% in 1995 and 1990, respectively. According to the Wirthlin Year 2000 Report, "This exceeds what is normally considered to be a healthy ratio of 3:1 for a typical industry. Overall, there is a 5:1 ratio of positive to negative comments."¹⁰

⁸ American Attitudes and Values Affected by Death and Death Care Services, prepared by The Wirthlin Group, McLean, VA, 1990. (Executive Summary Attached).

⁹ 1995 Study of American Attitudes Toward Ritualization and Memorialization, prepared by The Wirthlin Group, McLean, VA, 1995. (Executive Summary Attached).

¹⁰ 2000 Study of American Attitudes Toward Ritualization and Memorialization, prepared by Wirthlin Worldwide, McLean, VA, 2000. (Executive Summary attached).

In 1997, the ICFA commissioned a telephone survey by Walker Information of consumers who had preplanned and prepaid either their funeral or burial arrangements. A total of 400 interviews were conducted of purchasers in the Indianapolis, Indiana area, equally divided between cemetery and funeral home consumers.¹¹ Seventy-five percent of cemetery preplanners rated the experience as excellent or very good. Only three percent rated the experience poor. Among funeral preplanners, the rating of excellent and very good climbed to 81 percent, with only 1 percent finding the experience poor.

Asked whether they would recommend making cemetery/funeral prearrangements to others, 89 percent of cemetery preplanners and 84 percent of funeral preplanners said that they definitely or probably would. With respect to the reasons for preplanning cemetery or funeral arrangements, 81 percent and 80 percent, respectively, felt that prearrangement "eases the loss of a loved one" while 67 percent and 68 percent, respectively, agreed that "it saves money." In response to the question, "How satisfied were you with the prearrangements that were made?", 94 percent of cemetery and 97 percent of funeral preplanners were either satisfied or very satisfied with the plans.

Recently, AARP published a number of surveys concerning consumers' experiences with cemeteries. A 1999 "Funeral and Burial Planners Survey" contacted 2,600 consumers by phone but found only 358 individuals who bought cemetery lots, merchandise or services. While this survey has been publicized for finding that "one-third of the consumers were not given written

¹¹ Preplanning for Funeral and Cemetery Needs, prepared by Walker Information, Indianapolis, 1997. (Attached).

price lists by the cemetery," in fact that statistic refers to only one-third of the 8 percent who said they bought cemetery property. More importantly, the AARP survey contains no allegation that the information provided by cemeteries to consumers, whether written or oral, was not accurate and truthful.

Another recent AARP publication, "The Cemetery Mystery Shop Report," readily admits it is "anecdotal evidence" and "not quantitative research that allows us to generalize to other for-profit cemeteries." However, these disclaimers have not inhibited AARP from circulating the Report as if it were quantitative research. AARP volunteer "shoppers" visited 106 cemeteries but shopped 64 cemeteries twice, thus resulting in double counting of the results. As with the Burial Planners survey, AARP complains that "two-thirds of all shoppers were not shown written prices" yet acknowledges that 98 percent of the cemeteries volunteered price information on lots. Again there is no allegation that the information provided was not truthful and accurate. Of particular interest, the Report noted that 96 percent of the shoppers left the cemeteries with all their questions answered and 87 percent felt no pressure to buy anything.

Clearly, the survey data from a variety of sources indicate that most consumers react positively to their experiences in making funeral and burial arrangements when made in advance of need. The polling data confirms ICFA's position that incidences of consumer dissatisfaction decrease in direct proportion to the amount of preplanning and, where appropriate, pre-financing made by consumers.

Conclusion

The ICFA has found that the cemetery and funeral home industries are most effectively regulated at the state level because consumer transactions are local in nature, regardless of the ownership status of the seller. ICFA encourages states to develop uniform laws through its Model Guidelines and works actively with federal, state and consumer organizations, such as the Better Business Bureau, to quickly resolve consumer complaints and to prevent problems from occurring. Indications from all reliable sources, including the GAO investigative report, show persuasively that consumer problems are low in volume and are efficiently resolved.

Attachments

**ICFA Survey of State Cemetery and Mortuary Laws and Regulations
Chart 1 - Cemeteries**

State	For Profit		Property Type				On Site			Mortuary				Preconstructed Property						Endowment Class Trust					
	Permitted	Unlaw	Dev	Graves	Monu	Mark	Vault	Own/ Operate	On Cam Ground	Reclaim Abandon Lots	Sell Outside Other Funeral Merchandise	Subsidiary Licensed	As Real Estate Agents	Solicitation Restriction	Printed Contract Cancel	Trust	Deadline	All In	Lot	Crypt	None	New Cam	Special Reg	"Cover"	
1 AL	yes	yes			yes	yes	yes	yes	yes	no	no	no	no	no	yes	no	no	yes	none	none	none	none	no	AL	
2 AK	Base Attach									no	no	no	no	no	yes	no	no	yes	none	none	none	none	no	AK	
3 AR	yes	yes	yes		yes	yes	yes	yes	yes	no	yes	no	no	yes	yes	no	yes	20%	\$40.00	\$40.00	none	no	yes	AR	
4 AZ	yes			yes	yes	yes	yes	yes	yes	no	yes	yes	yes	yes										yes	AZ
5 CA	no				yes	yes	yes	yes	yes	no	yes	yes	no	no	yes	no	no	2.75%	\$120	\$36	\$25,000	no	yes	CA	
6 CO	yes				yes	yes	yes	yes	yes	no	yes	no	no	yes	yes	no	no	2.25%	\$110	\$36	\$55,000	no	no	CO	
7 CT	no	no	no	no	yes	yes	yes	yes	no	yes	yes	no	no	yes	yes	no	no	1%	10%	10%	no	yes	no	CT	
8 DE					yes	yes	yes				yes	no	no	no	yes			none	\$100	10%	none	yes	no	DE	
9 DC																								DC	
10 FL	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	no	no	yes	yes	yes	yes	10%	10%	10%	\$50,000	yes	yes	FL	
11 GA	yes				yes	yes	yes	yes	yes	yes	no	no	no	yes	yes	yes	yes	10%	10%	10%	\$10,000	no	no	GA	
12 HI	yes	yes			yes	yes	yes	yes	yes	no	yes	no	no	yes	no	no	no	10%	8%	6%	\$10,000	no	no	HI	
13 ID	yes	yes								no	yes	yes	no	yes	no	no	no	\$30	\$20	\$20	no	no	no	ID	
14 IL	yes			yes	yes	yes	yes	yes	yes	no	yes	no	no	yes	yes	60%	no	yes	\$10000	\$25	\$2	\$50,000	Yes	Yes	IL
15 IN	yes	yes	no	no	yes	yes	yes	yes	yes	no	yes	no	no	yes	yes	no	no	1%	8%	\$10.00	\$25,000	Yes	Yes	IN	
16 IA	yes				yes	yes	yes	yes	yes	yes	Yes**		no	yes	yes	no	no	20%	20%	20%	\$25,000	yes	no	IA	
17 KS	yes				yes	yes	yes	yes	yes	no	yes	no	no	yes	yes	yes	yes	15%	0	0	\$35,000	no	no	KS	
18 KY	yes				yes	yes	yes	yes	yes	yes	yes	no	no	no	yes	yes	yes	30%	6%	10%	\$20,000	no	no	KY	

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**ICFA Survey of State Cemetery, Mortuary and Crematory Laws and Regulations
Chart 1 - Cemeteries**

State	Permits			Property Tax			Cem. Bell			Mortuary					Preconstructed Property				Endowment Care Trust					"Care" Def???		
	Permitted	Under	Dev	Graves	Monu	Mark	Visit	Chur/ Operate	On Cem Ground	Reclaim Abandon Lots	Bell Castles Other Funeral Merchandise	Burialmen Licensed	As Real Estate Agents	Bolton Restriction	Prepaid Contract Cancel.	Trust	Deadline	All to Trust	Lot	Crypt	None	New Cem	Special Reg			
19 LA	yes				yes	yes	yes	yes	yes	no	no	no		no	no	yes	yes	no	10%	10%	10%	\$25,000		no	LA	
20 MD *	yes	yes	yes	yes	yes	yes	yes	no		no	yes	no		no	yes	no	no	no	10%			\$25,000	yes	no	MD	
21 MA	no	no	no	no	no	no	yes	no		yes	no				yes										MA	
22 ME	no	no	no	no	yes	yes	yes	no		yes	yes	no		yes	yes	no	yes		30%	30%				yes	ME	
23 MI *	yes	yes			yes	yes	yes	no		yes	yes	no		yes	yes	yes	yes		15%	15%	15%	\$25,000		no	MI	
24 MN	yes	yes	no	no	yes	yes	yes	yes	yes	yes	no			none	yes	no	yes	20%	10%	10%	none	none	no	no	MN	
25 MS																									MS	
26 MO	yes	no	no	no	yes	yes	yes	yes	yes	no	yes	no	no	no	yes	no	no	no	15%	10%	10%	\$25,000	yes	yes	MO	
27 MT	yes	yes			yes	yes	yes	yes	yes	no	yes	no		no	no	yes	no	yes	15%			none	no	no	MT	
28 NE *	yes				yes	yes	yes	yes	yes		yes	yes	no	yes	yes	yes	no	yes							no	NE
29 NY	yes	no	no	no	yes	yes	yes	yes	yes	yes	yes	no		yes	yes	yes	no	no	5%	5%	5%			no	NY	
30 NH	yes	no	no	no	yes	yes	yes	yes	no	yes	yes	no		no	yes	no	no	no	no	no	no	none		yes		
31 NJ	no	no	no	no	no	no	no	no	no	yes	no	yes	no	no	no	no	no	no	10%	10%	10%	\$25,000		no	NJ	
32 NM *	yes	yes	yes	yes	yes	yes	yes	yes	no	no	yes	no		yes	yes	yes	no	no	25%	10%	10%	\$25,000	yes	no	NM	
33 NY *	no				no	yes	no	no	no	yes	no	no		no	yes	no	no	no	10%	10%	10%	N/A	no	no	NY	
34 NC *	yes	yes	yes	no	yes	yes	yes	yes	yes	no	no	yes	no	yes	yes	yes	yes	yes	\$40.00	\$40.00	\$40.00	\$50,000		no	NC	
35 ND																									ND	
36 OH	yes	yes	yes		yes	yes	ye	no		no	no	yes	yes	no	yes	no	yes		10%	10%	10%	\$50,000		no	OH	

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ICFA Survey of State Cemetery, Mortuary and Crematory Laws and Regulations
Chart 1 - Cemeteries

State	Permitted	Property Tax			Cem. Bell			Mortuary		Reclaim Abandon Lots	Bell Caskets Other Purview Merchandise	Bereavement License	As Real Estate Agents	Bollitation Restriction	Preneed Contract Cancel.	Preconstructed Property			Endowment Cash Trust				Special Reg.	"Care" Deffff?	
		Under	Dev	Graves	Mortu	Mark	Visit	Own/ Operate	On Cem Ground							Trust	Deadline	All to Trust	Lot	Crypt	Mtchs	New Cem			Spedal Reg
37	OK	*	yes			yes	yes	yes	yes	yes	no	no	no	no	no	no	no	no	10%	10%	10%	no	no	yes	OK
38	OR	*	yes	yes	no	no	yes	yes	yes	yes	yes	yes	no	yes	yes	yes	no	no	15%	\$15	85	no	no	yes	OR
39	PA	*	yes	yes	yes/no	yes/no	yes	yes	yes	yes	yes	yes	yes	no	yes	yes	no	no	15%	15%	15%	\$50,000	no	no	PA
40	RI		yes	yes	yes	yes	yes	no		yes		no		no	yes	yes	yes	yes	20%	20%	20%	no	no	yes	RI
41	SC		yes		no	no	yes	yes	yes	yes	no	no		yes	no	yes	yes	no	10%	5%	15%	\$15,000	yes	yes	SC
42	SD																								SD
43	TN																								TN
44	TX	*	yes	yes	yes	no	yes	yes	separate	yes	yes	no	no	no	yes**	yes	no	no	10%**	5%**	10%**	\$50,000	yes	yes	TX
45	UT		yes	yes	yes		yes	yes	yes	yes	yes	no	yes	no	yes	yes	no	yes				\$50,000	yes	no	UT
46	VT	*					yes	yes	yes	yes		yes	no	no	yes	yes									VT
47	VA		yes	yes	yes	yes	yes	yes	yes	yes	no	no	no	no	yes	yes	yes	yes	10%	10%	10%	\$25,000	yes	no	VA
48	WA	*	yes	yes		yes	yes	yes	yes	yes	yes	no	no	no	yes	yes	yes	no	10%	10%	10%	\$25,000	yes	yes	WA
49	WV		yes	no	no	no	yes	yes	yes	yes	no	yes	no	no	no	yes	yes	no	10%	5%	5%	\$10,000		yes/no	WV
50	WI	*	yes			yes	yes	yes	no		yes	yes	yes	no	yes	yes	yes	yes	15%	25%	25%			no	WI
51	WY		No**	yes	yes		yes	yes	yes	yes	no	yes	yes	no	yes	yes	no	no	30 eq 1**	20**	20**	no	no	no	WY
52																									0

* Responses obtained from state regulatory boards. A blank indicates a lack of response.

Note: The survey responses are for general information purposes only and should not be used for purposes of legal compliance.

** See attached State Law Survey Form Footnotes

**ICFA Survey of Cemetery and Funeral Home Statutes & Regulations
Merchandise and Services Trust**

State	Merchandise				Trust		Finance Charges		Constructive Delivery		Irrevocable Trusts		Excess Earnings		Interest Earnings		Restrictions on Trust Investments	
	Amount for Cemetery Merchandise	Amount for Cemetery Services	Amount for Funeral Merchandise	Amount for Funeral Services	Member Trust Cemetery	Member Trust Funeral Home	Finance Charges Cemetery	Finance Charges Funeral Home	Constructive Delivery Cemetery	Constructive Delivery Funeral Home	Irrevocable Trusts Cemetery	Irrevocable Trusts Funeral Home	Excess Earnings Cemetery	Excess Earnings Funeral Home	Interest Earnings Cemetery	Interest Earnings Funeral Home	Restrictions on Trust Investments Cemetery	Restrictions on Trust Investments Funeral Home
1 AL	None	None	None	None	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
2 AK	-	-	100%	100%	Yes	Yes	Yes	Yes	NA	NA	No	No	No	No	No	No	No	Yes
3 AR	100%	100%	100%	100%	NA	Yes	NA	Yes	NA	No	NA	Yes	NA	Yes	NA	Yes	No	Yes
4 AZ*	See Attach	See Attach	85%/10%	85%/10%	No**	Yes**	No	No	No	NA	No	Yes	No	No	No	No	NA	Yes
5 CA*	Unregulated	Unregulated	Unregulated	Unregulated	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	NA	NA	Yes	No	Yes	NA
6 CO	10%	10%	10%	10%	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes
7 CT	Not Limited	Not Limited	Not Limited	Not Limited**	NA	Yes	NA	No	NA	No	NA	Yes	NA	No	NA	No	NA	Yes
8 DE*	Unregulated	Unregulated	10,000	10,000	NA	No	NA	No	NA	No	NA	Yes	NA	No	NA	No	NA	No
9 DC																		
10 FL	110%W-30%	100%	Same as Cem.	100%	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes
11 GA	35% SP/Price	100%	100%	?	Yes	NA	Yes	NA	Yes	NA	Yes	NA	Yes	Yes	Yes	Yes	Yes	NA
12 HI	70%	70%	70%	70%	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
13 ID	80%	80%	80%	80%	No	Yes	Yes	Yes	Yes	NA	Yes	Yes	Yes	Yes	No	No	No	Yes
14 IL*	80%	80% Deposit	85%W-85%C	85%	Yes	Yes	Yes	Yes	Yes	NA	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
15 IN	100%	100%	100%	100%	NA	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
16 IA*	120% Wholesale	80% Retail	80% Retail	80% Retail	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
17 IOP*	110% Wholesale	100% SP/Price	100% SP/Price	100% SP/Price	No	Yes	NA	NA	Yes	No	No	Yes	Yes	No	No	No	No	No
18 KY*	5,825,130	854,983	NA	80,434,202	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	Yes	Yes

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**ICFA Survey of Cemetery/Funeral Home Statutes & Regulations
Merchandise and Services Trust**

State	Amount for Cemetery Merchandise	Amount for Cemetery Services	Amount for Funeral Merchandise	Amount for Funeral Services	Master Trust		Finance Charges		Constructive Delivery		Irrevocable Trusts		Excess Earnings		Interest Earnings		Restrictions on Trust Investments	
					Master Trust Cemetery	Master Trust Funeral Home	Finance Charges Cemetery	Finance Charges Funeral Home	Constructive Delivery Cemetery	Constructive Delivery Funeral Home	Irrevocable Trusts Cemetery	Irrevocable Trusts Funeral Home	Excess Earnings Cemetery	Excess Earnings Funeral Home	Interest Earnings Cemetery	Interest Earnings Funeral Home	Restrictions on Trust Investments Cemetery	Restrictions on Trust Investments Funeral Home
19 LA*	5% B/Pribe	5% B/Pribe	100%	100%	No	No	Yes	No	Yes	No	Yes	Yes	No	Yes**	No	Yes**	Yes	Yes
20 MO*	50% Contract	50% Contract	100% Contract	100% Contract	Yes	Yes	No	N/A	Yes	No	No	Yes	No	No	No	No	Yes	Yes
21 MA	Not Limited	Not Limited	Not Limited	Not Limited	N/A	Yes	N/A	No	N/A	Yes	N/A	Yes	N/A	No	N/A	No	N/A	Yes
22 ME	100% Purch	100% Trusts	100% Trusts	100% Trusts	Yes	No**	No	N/A	No	No	No	N/A	No	No	No	No	Yes	Yes
23 MI*	130% Cost	100%	100%	100%	No	N/A	Yes	Yes	N/A	N/A	No	Yes	Yes	No	Yes	No	Yes	Yes
24 MN	100%	100%	100%	100%	Yes	Yes	Yes	Yes	Yes	None	None	Yes	Yes	No	No	No	Yes	Yes
25 MS																		
26 MO*	80%	80%	80% Contract	80% Contract	Yes	Yes	N/A	N/A	N/A	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
27 MT	Wholesale Cost	100%	100%	100%	Yes	Yes	No	No	Yes	No	No	Yes	No	No	No	No	Yes	Yes
28 ME*	85% Deposit	85% Deposit	85% Deposit	85% Deposit	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
29 NY	80%	80%	70%	70%	N/A	N/A	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
30 NH	N/A	N/A	N/A	N/A	N/A	N/A	Yes	N/A	N/A	N/A	Yes	Yes	N/A	N/A	N/A	N/A	No	N/A
31 NJ	100%	100%	100%	100%	Yes	Yes	No	No	N/A	No	Yes	Yes	No	No	No	No	Yes	Yes
32 NM	-	-	In Co Comm	In Co Comm	Yes	No	Yes	No	No	Yes	Yes	Yes	Yes	No	Yes	No	N/A	N/A
33 NY*	N/A	N/A	N/A	N/A	No	N/A	Yes	N/A	No	N/A	Yes	N/A	No	N/A	Yes	N/A	Yes	N/A
34 NC*	80% Retail	80% Retail	N/A	N/A	Yes	N/A	Yes	N/A	Yes	N/A	No	N/A	Yes	N/A	Yes	N/A	Yes	N/A
35 ND																		N/A
36 OH	80% for Value	None	100%	100%	N/A	Yes	Yes	Yes	Yes	Yes	Yes	N/A	No	No	No	No	Yes	Yes

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**ICFA Survey of Cemetery/Funeral Home Statutes & Regulations
Merchandise and Services Trust**

State	Amount for Cemetery Merchandise	Amount for Cemetery Services	Amount for Funeral Merchandise	Amount for Funeral Services	Master Trust		Finance Charges		Constructive Delivery		Irrevocable Trusts		Excess Earnings		Interest Earnings		Restrictions on Trust Investments	
					Cemetery	Funeral Home	Finance Charges Cemetery	Finance Charges Funeral Home	Constructive Delivery Cemetery	Constructive Delivery Funeral Home	Irrevocable Trusts Cemetery	Irrevocable Trusts Funeral Home	Excess Earnings Withdrawal Cemetery	Excess Earnings Withdrawal Funeral Home	Interest Earnings Withdrawal Cemetery	Interest Earnings Withdrawal Funeral Home	Restrictions on Trust Investments Cemetery	Restrictions on Trust Investments Funeral Home
37 OK*	110% Withd	N/A	0%G-100%N	0%G-100%N	N/A	N/A	N/A	No	Yes	N/A	N/A	Yes	Yes	N/A	Yes	N/A	Yes	Yes**
38 OH*	Formals	100%	0%G-100%N	0%G-100%N	Yes	Yes	N/A	N/A	Yes	No	N/A	Yes	No	No	Yes	Yes	Yes	Yes
39 PA*	70%	70%	100%	100%	Yes	Yes	N/A	N/A	N/A	No	N/A	Yes	No	No	Yes	No	Yes	Yes
40 RI	N/A	N/A	N/A	N/A	N/A	Yes	N/A	Yes	N/A	Yes	N/A	Yes	N/A	Yes	N/A	Yes	No	Yes
41 SC*	N/A	N/A	Unleashed	N/A	N/A	Yes	N/A	Yes	N/A	Yes	N/A	Yes	N/A	No	N/A	No	N/A	Yes
42 SD																		
43 TN*	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
44 TX*	N/A	N/A	50% P/Price	50% P/Price	Yes	Yes**	Yes	Yes	N/A	No	Yes	Yes**	N/A	No**	N/A	Yes**	No**	Yes
45 UT	100%	100%	100%	100%	No	No	No	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
46 VT*	N/A	N/A	N/A	N/A	N/A	Yes	N/A	No	N/A	N/A	N/A	Yes	N/A	Yes	N/A	Yes	N/A	No
47 VA	N/A	N/A	50%	50%	N/A	No	N/A	No	N/A	Yes	N/A	Yes	N/A	No	N/A	No		
48 WA*	50% Trusting	50% Trusting	50%	50%	Yes	Yes	Yes	Yes	Yes	No	N/A	Yes	No	No	No	No	Yes	Yes
49 WV	40% of Retail	40% of Retail	50% of Retail	50% of Retail	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	No	Yes	No	Yes	Yes
50 WY*	40% Prior**	None	100%	100%	No	No	N/A	N/A	No	No	No	Yes	No	No	No	No	Yes	Yes
51 WY	100%	100%	100%	100%	Yes	Yes	No	No	N/A	No	Yes	Yes	N/A	Yes	No**	Yes	Yes	Yes
52																		

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 ** See attached State Law Survey Form Footnotes

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**ICFA Survey of Cemetery/Funeral Home Statutes & Regulations
Funeral Home Operations**

	States	Requirements Licensed Funeral Director	Can Funeral Director Sell Insurance	Prepaid Law	Ballot/Restrictions	Arrangement Conference Fee	Who May Sell Prepaid	Stateing Commission
1	AL		Yes	No	Yes	Yes	Licensed FH	No
2	AK*		No	No	Yes	NA	NA	NA
3	AR		Yes	Yes	No	Yes	Funeral Homes	Yes
4	AZ*	Yes	Yes	Yes	Yes	Yes	Funeral Homes**	No
5	CA*		Yes	Yes	Yes	Yes		Yes
6	CO	None	Yes	Yes	Yes	No	Lit Prepaid Agent	No
7	CT		Yes	Yes	No	No	Lit Funeral Dir	Yes
8	DE*		Yes	Yes	No	No	Any Funeral Home	Yes
9	DC							
10	FL		Yes	Yes	Yes	Yes	Pre-Need Certif	No
11	GA		No	Yes	Yes	Yes	Funeral Directors	Yes
12	HI		Yes	Yes	No	No	Funeral Home	No
13	ID		Yes	Yes	No	No	Licensed Insurer	Yes
14	IL*	Yes	Yes**	Yes	No	No	See Attach	Yes
15	IN		Yes	Yes	Yes	Yes	Registered w/State	No
16	IA*		If Lit Ins Agent	Yes	No	Yes	Lit Sales Agents	Maybe
17	KS*		Yes	Yes	Yes	Yes	Funeral Homes	NA
18	KY*		Yes	Yes	No	No	Prepaid License	No

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Note: The survey responses are for general information purposes only and should not be used for purposes of legal compliance.

** See attached State Law Survey Form Footnotes

G:\Users\LID\Lee\Table 3

**ICFA Survey of Cemetery/Funeral Home Statutes & Regulations
Insurance Vehicles**

	States	Can Cemetery Sell Funeral Insurance	Licensing Requirements	Restrictions on Selling Insurance
1	AL	Yes	Life Insurance Agents License Required	NA
2	AK	NA	NA	NA
3	AR	No	NA	NA
4	AZ	Yes**	NA	NA
5	CA	Yes	Business & Professions Code 8700	Person Must Be a Licensed Agent
6	CO	Yes	Must Be Licensed Pre-Need Insurance Rep	Must Comply With Statutes and Regulations
7	CT	No	Licensed With Insurance Department	NA
8	DE	No	Licensed Life Insurance Agent	Licensed Life Insurance Agent
9	DC			
10	FL	No	NA	NA
11	GA	No	NA	NA
12	HI	Yes	None	None
13	ID	Yes	Licensed	Licensed
14	IL	Yes	Must Be Licensed With Department of Insurance	Seller Or Provider Cannot Be Beneficiary
15	IN	Yes	Must Have Life Insurance Licensing	NA
16	IA	Yes	Licensed Insurance Agent	Advertising Disclosure Rule - NAUC Model
17	KS	NA	NA	NA
18	KY	Yes	Licensed By The Department of Insurance	NA

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Updated 12/31/98
Printed 8/28/97

**ICFA Survey of Cemetery/Funeral Home Statutes & Regulations
Funeral Home Operations**

States	Requirements Licensed Funeral Director	Can Funeral Director Sell Insurance	Preneed Law	Subsidiary Restrictions	Arrangement Conference Fee	Who May Sell Preneed	Steering Commission
19 LA*		Yes**	Yes	Yes	Yes		No
20 MD*		Yes	Yes	No	N/A		No
21 MA		No	Yes	No	Yes	Licensed FDCR	Yes
22 ME		No	Yes	Yes		Licensed FDCR	
23 MI		Yes	Yes	Yes	Yes	Appointed Licensee	No
24 MN		No	Yes	No	Yes	No Restrictions	Yes
25 MS							
26 MO*		No	Yes	No	Yes	Reg Seller	N/A
27 MT		No	Yes	Yes	No	Lic. Mortician**	Yes
28 NE*		Yes	Yes	Yes-Ins/No-P/Need	N/A		Yes-Ins/No-P/Need
29 NY		Yes	Yes	No	No	Funeral Homes	No
30 NH		N/A	Yes	N/A	N/A	N/A	N/A
31 NJ		Yes**	Yes	Yes	Yes	Funeral Directors	Yes
32 NM*		Unknown	N/A	N/A	Unknown		N/A
33 NV**		N/A	N/A	N/A	N/A		N/A
34 NC*		N/A	N/A	N/A	N/A		N/A
35 ND							
36 OH		Yes	Yes	No	No	Funeral Directors	Yes

* Responses obtained from state regulatory boards. A blank indicates a lack of response.

Note: The survey responses are for general information purposes only and should not be used for purposes of legal compliance.

** See attached State Law Survey Form Footnotes

G:\Users\LID\Lee\Table 3

**ICFA Survey of Cemetery/Funeral Home Statutes & Regulations
Insurance Vehicles**

States	Can Cemetery Sell Funeral Insurance	Licensing Requirements	Restrictions on Selling Insurance
19 LA	Yes	N/A	N/A
20 MD	No	Only Licensed Insurance Agent	Yes
21 MA			
22 ME	No		
23 MI	Yes	Limited Life Insurance License Required	Must Be Associated With Funeral Services Provider
24 MN	Yes	Yes	Chol Be Employee of Home Interest. In Home/Com
25 MS			
26 MO	Yes	Must Be Registered With Board As Sellers	Must Be Licensed to Sell Insurance
27 MT	No	State License	N/A
28 NE	Yes	Meet State Requirements	Same as Agent Or Agency Licensed Within State
29 NY	Yes	License	None
30 NH	Yes	Insurance Comm.	None
31 NJ	No	Yes**	Yes**
32 NM	N/A	N/A	N/A
33 NY	No	No	N/A
34 NC	N/A	N/A	N/A
35 ND			
36 OH	Yes	Ohio License	License (Insurance, Health, etc)

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Updated 12/31/88
Printed 8/26/87

ICFA Survey of Cemetery/Funeral Home Statutes & Regulations
Funeral Home Operations

State	Requirements Licensed Funeral Director	Can Funeral Director Sell Insurance	Parson Law	Substitution Restrictions	Arrangement Conference Fee	Who May Sell	State's Contribution
37	OK	Yes	Yes	Yes	No	Funeral Homes	No
38	OK*	Yes	Yes	Yes	Yes	See Attachment	Yes
39	PA*	Yes	Yes	Yes	No	Funeral Director	No
40	RI	Yes	Yes	No	Yes	Funeral Director	No
41	SC*	Yes	Yes	Yes	No		Yes
42	SD						
43	TH*	N/A	N/A	N/A	N/A		N/A
44	TX*	Yes	Yes	Yes	No	Anyone w/License	No
45	UT	Yes	Yes	Yes	No	Funeral Homes	Yes
46	VT*	Yes	Yes	Yes	No		No
47	VA	Yes	Yes	Yes	No	Funeral Directors	Yes
48	WA*	No	Yes	Yes	No		Yes
49	WV	Yes	Yes	Yes	Yes		Yes
50	WY*	Yes	Effective 8/1/97	Yes**	N/A	See Attachment	N/A
51	WY	Yes**	Yes	No	Yes	Funeral Home	No
52							

* Responses obtained from state regulatory boards. A blank indicates a lack of response.

Note: The survey responses are for general information purposes only and should not be used for purposes of legal compliance.

** See attached State Law Survey Form Footnotes

ICFA Survey of Cemetery/Funeral Home Statutes & Regulations
Insurance Vehicles

State	Can Cemetery Sell Funeral Insurance	Licensing Requirements	Restrictions on Selling Insurance
37	OK	Yes	Insurance License/Permit from State Embalmers Bd.
38	OR	Yes	Must Be Licensed By Department of Insurance
39	PA	Yes	Yes
40	RI	No	N/A
41	SC	No	N/A
42	SD		
43	TH	N/A	N/A
44	TX	Yes	Parson License
45	UT	No	N/A
46	VT	Yes	Pass Insurance Test
47	VA		
48	WA	No	Agents Licensed By Insurance Commissioner's Office
49	WV	Yes	Standard Life Insurance Agents License
50	WI	No	N/A
51	WY	Yes	Licensed Agent - Insurance Rep
52			

State Law Survey Form Footnotes

Alaska

Chart 1 - Cemeteries

No licensing in Alaska

Arizona

Merchandise and Services Trust - Amount for Cemetery Merchandise and Services

No law or Regulation on the Sale of Preneed Cemetery Goods or Services

Merchandise and Services Trust - Master Trust Cemetery

Endowed Care Cemeteries. Master Trust Cemetery - 32-2194.26 Requires Minimum Deposit

(Initial) 32-2194.28 Deposit Required From Sales.

No Trust for Cemeteries for Cemetery Merchandise. 32-2194.30 Prudent Man - Investment of Funds.

Merchandise and Services trust - Funeral Home

Maintained in FDIC Bank. Monitored by State Department of Banking

Funeral Home Operations - Who May Sell Preneed

If endorsed by the Board to Sell Trust, or if Licensed by Department of Insurance.

Insurance Vehicles - Can Cemetery Sell Funeral Insurance

If Licensed by Department of Insurance

Connecticut

Merchandise and Services Trust

Irrevocable Funeral Trust (Title 19 Limit is \$4800)

Revocable Funeral Trust - No Limit

Illinois

**Chart 1 - Cemeteries - Reclaim Abandon Lots
On Very Limited Basis**

**Chart 1 - Cemeteries - Endowment Care Trust - New Cemeteries
\$25,000 Based On Population**

**Funeral Home Operations - Can Funeral Director Sell Insurance
If Licensed With Department Of Insurance**

Funeral Home Operations - Who May Sell Preneed
1. Preneed Licensee
2. State Licensed Insurance Agent

Iowa

**Chart 1 - Cemeteries - Salesmen Licensed
Yes, if Pre-Need Sale**

**Merchandise and Services Trust - Interest Earnings
Can Withdraw 1/2 of \$ Earned Over the Rate of Inflation**

Louisiana

**Funeral Home Operations - Can Funeral Director Sell Insurance
If Licensed Insurance Agent Under Title 22**

**Merchandise and Services Trust - Excess Earnings Withdrawal Funeral Home
Only at Time of Death with Death Certificate and Funeral Bill**

**Merchandise and Services Trust - Interest Earnings Withdrawal Funeral Home
Only at Time of Death with Death Certificate and Funeral Bill**

Maine	Merchandise and Services Trust - Master Trust Funeral Home Maine FDA has a Master Trust Plan with Internment Trust Service Access Financial Group of Chicago thru Key Bank of Maine
Montana	Funeral Home Operations - Who May Sell Preneed Funeral Home Employee Cannot Sell Preneed
New Jersey	Funeral Home Operations - Can Funeral Director Sell Insurance Yes, but New Jersey Insurance Practitioner's License also Required Insurance Vehicles - Licensing Requirements Yes, but New Jersey Insurance Practitioner's License also Required Insurance Vehicles - Restrictions on Selling Insurance Yes, but New Jersey Insurance Practitioner's License also Required
Oklahoma	Merchandise and Services Trust - Restrictions on Trust Investments Funeral Home 100% U.S. Government Backed only
Oregon	Funeral Home Operations - Who May Sell Preneed Registered Preneed Salespersons

248

Pennsylvania

Chart 1 - Cemeteries

Developed cemetery lots are taxed until sold, then they are exempt; likewise graves.
Mortuaries must carry the name of the licensed individual
Licensing as a real estate agent is unnecessary if only merchandise is being sold.
Endowment Care - for lots, the 15% is based on the selling price; crypts, 15% of construction costs; for nich

Texas

Chart 1 - Cemeteries - Vault

Can only sell at-need, not preneed without preneed permit

Chart 1 - Cemeteries - Solicitation Restrictions

Not in Cemetery Statute but in other laws

Chart 1 - Cemeteries - Lot

Of sales price or 1.50 per square foot whichever is greater

Chart 1 - Cemeteries - Crypt

Of sales price of \$90 for each crypt whichever is greater

Chart 1 - Cemeteries - Niche

Of sales price or 30 per niche whichever is greater

Merchandise and Services Trust - Master Trust Funeral Home

But must be able to maintain separate records for each funeral permit holder

Merchandise and Services Trust - Irrevocable Trusts Funeral Home

Only if requested by purchase, otherwise revocable

Merchandise and Services Trust - Excess Earnings Withdrawal Funeral Home

Repealed December 31, 1993

Merchandise and Services Trust - Interest Earnings Withdrawal Funeral Home

At time of death

Merchandise and Services Trust - Restrictions on Trust Investments
Only Prudent Man Rule

Wisconsin

Funeral Home Operations - Solicitation Restrictions
Currently rules are State Legislative Committee

Funeral Home Operations - Who May Sell Preneed
Funeral Directors and Their Contracted Agents who must hold insurance agent license.

Wyoming

Merchandise and Services Trust - Amount for Cemetery Merchandise
If sold as "preneed"

Chart 1 - Cemeteries - Permitted
W.S. 35-8-103

Chart 1 - Cemeteries - Lot
W.S. 35-8-103

Chart 1 - Cemeteries - Crypt
W.S. 35-8-404

Chart 1 - Cemeteries - Niche
W.S. 35-8-404

Merchandise and Services Trust - Interest Earnings Withdrawal Cemetery
Interest and income must be applied to perpetual care unless it is a pre-need trust for goods and services.

Funeral Home Operations - can Funeral Director sell insurance

W.S. 26-32-201

26-13-123 repealed

Must be a licensed insurance agent



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 1895 Preston White Drive
 Reston, VA 20191
 Telephone: 703.391.8400
 Toll free: 1.800.645.7700
 Fax: 703.391.8416
 www.icfa.org
 email: gen4@icfa.org

ICFA CODE OF ETHICS

We, the members of the International Cemetery and Funeral Association, are ever mindful of the need for sensitivity when serving individuals during their time of grieving. We are aware of the professional nature of service we render to our community. Therefore, we pledge:

- 1.) To acknowledge that ours is a business of remembrance and memorialization. Our primary mission is to help families maintain and enhance memories of their loved ones.
- 2.) To serve with compassion, fairness, and honesty, being ever mindful of our customers' emotional state and the sensitive nature of our service.
- 3.) To respectfully accommodate all races, creeds, and ethnic customs, within our ability to do so.
- 4.) To provide consumers with useful and accurate price information.
- 5.) To provide our customers with plain language contracts that explain our mutual rights and obligations; to clearly describe in our contracts the services, merchandise, and interment spaces purchased.
- 6.) To ensure that our customers have a full understanding of the pricing, terms and conditions affecting the services, merchandise, and interment spaces purchased from us.
- 7.) To reserve adequate funds from the preneed sale of services, merchandise, and interment spaces to assure performance or delivery at the time of need. Preneed contracts should clearly disclose the nature of the transaction and should contain a written explanation of how the customer's rights will be protected, which should include whether the prices are guaranteed, the disposition of any excess prepaid funds, and what happens if the selected merchandise or interment spaces are not available at the time of need and substitution is necessary.
- 8.) To clearly disclose in our preneed contracts whether the opening and closing/entombment fee has been paid in advance and whether an outer burial container will be required at the time of need.

9.) Not to mischaracterize the preneed purchase of services, merchandise, and interment spaces as a form of financial investment whereby the purchaser will realize a monetary profit.

10.) Not to state or imply that an offer referred to in an advertisement, sales promotion, or presentation is connected with a government agency or other organization when that is not the case.

11.) Not to misuse the term "free" in advertisements, sales promotions, or presentations. If an allowance is offered, it will be bona fide and the comparative prices for non-qualifying persons will be disclosed. Any such allowance or discount shall not be made by adjusting upward the prices of other items offered in connection with the purchase.

12.) To use due diligence in the hiring process and in training of all staff prior to their serving the public to ensure that all information they provide is accurate, reliable and complete.

13.) To promptly investigate any allegations of misconduct involving our staff or agents or complaints involving our facilities, and to take appropriate action.

14.) To support and assist the Association in its investigation of complaints lodged against any member involving a violation of this Code, including the prompt discipline of any member found guilty of such violation. Additionally, any member found in violation of this Code may be reported to state and federal authorities for possible prosecution under applicable laws.

15.) To properly maintain our cemetery grounds in acknowledgment of our mission as guardians of a nations heritage.

###

Approved by Board of Directors, 3/24/99



Cemetery Consumer Service Council
Reston, VA 20195-0028

• Post Office Box 2028
Phone (703) 391-8407

CONTACT: Robert M. Fells
703-391-8407

FOR IMMEDIATE RELEASE

CEMETERY CONSUMER SERVICE COUNCIL

RELEASES 1998 ACTIVITY SURVEY DATA

Reston, VA -- December 22, 1999 -- The Cemetery Consumer Service Council (CCSC) has announced the results of its Activity Survey Report for the year 1998. A total of 77 complaints and inquiries were processed during the year. Of that number, 70 were resolved. Seven complaints and inquiries were pending at the beginning of the year while 10 remained at year's end. These figures are based on the responses provided by 22 of the 38 state CCSC committees. Unlike past years where the tally included totals reported by a few state regulatory boards to which CCSC referred inquiries and complaints, this year's responses were received entirely from the volunteers at state cemetery trade associations.

Among the various types of complaints and inquiries received, the largest number, 42, dealt with improper cemetery maintenance; 7 dealt with deceptive or questionable sales practices, 2 with Truth in Lending matters and other contractual issues, 15 with cemetery rules and regulations, and another 9 with a variety of other issues including simple inquiries into cemetery practices.

The Cemetery Consumer Service Council is now in its 20th year of operation and continues to improve its effectiveness to assist consumers. An increasing number of calls originate as referrals from the Better Business Bureau and similar organizations. The CCSC also contacts members of Congress to advise them of the assistance and information that the Council can offer their constituents.

(more)

CCSC is a non-profit organization created in 1979 by the American Cemetery Association (now the International Cemetery and Funeral Association), the Cremation Association of North America, the Central States Cemetery Association and the Southern Cemetery Association. The sole purpose of CCSC is to assist consumers, without charge, in resolving complaints or answering inquiries regarding cemetery services or policies. Participation in the complaint resolution process is voluntary for both the consumer and the cemetery.

Industry members volunteer their time and experience to serve as CCSC representatives in their respective states. The Federal Trade Commission, the U.S. Department of Veterans Affairs, various state consumer protection agencies, and offices of attorneys general are periodically notified of CCSC activities and are among the major sources for consumer referrals. CCSC is listed in the Consumer's Resource Handbook, a U.S. Government publication that is circulated to public libraries and consumer assistance agencies throughout the nation.

Complaints are handled by the state committees with the national CCSC office in the Washington, D.C. area being the overall coordinator of the project and the central contact point. Complaints received by the national office are logged in and each is given a file number for tracking purposes. A copy of the complaint is then forwarded to the appropriate state representative for investigation and action. At that point, many complaints are resolved by telephone and the consumer is promptly notified of the results. It is rare for a cemetery to refuse to participate in the CCSC dispute resolution process. Where no state committee exists, CCSC works with the cemetery board or similar government agency to assist the consumer.

(more)



Cemetery Consumer Service Council • Post Office Box 2028
Reston, VA 20195-0028 Phone (703) 391-8407

SUMMARY

1998 ACTIVITY SURVEY

22 out of 38 State Committees Reporting

Number of Complaints and Inquiries:

a. Pending at beginning of year	<u>7</u>
b. Received during year	<u>70</u>
c. Resolved during year	<u>67</u>
d. Inquiries pending at end of year	<u>10</u>

Categories of complaints and inquiries received:

a. Improper maintenance	<u>42</u>
b. Deceptive sales practices	<u>7</u>
c. Truth-in-lending and other contractual deficiencies	<u>2</u>
d. Rules and regulations	<u>15</u>
e. Other	<u>9</u>

Have any complaints or inquiries received by your committee during the year gone to litigation or other legal action?

Yes. 0 states

If yes, how many? N/A Case(s).

Check the agencies and organizations that your committee has notified about the availability of its services:

17 attorney general 13 Better Business Bureau 6 local TV station

16 state cemetery board 7 Chamber of Commerce 1 newspapers



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FOR IMMEDIATE RELEASE

CEMETERY CONSUMER SERVICE COUNCIL

RELEASES 1997 ACTIVITY SURVEY DATA

Reston, VA -- December 23, 1998 -- The Cemetery Consumer Service Council (CCSC) has announced the results of its Activity Survey Report for the year 1997. A total of 113 complaints and inquiries were processed during the year. Of that number, 93 were resolved. Six complaints and inquiries were pending at the beginning of the year while 14 remained at year's end. These figures are based on the responses provided by 22 of the 38 state CCSC committees. Unlike past years where the tally included totals reported by a few state cemetery boards to which CCSC referred inquiries and complaints, this year's responses were received entirely from the volunteers at state cemetery trade associations.

Among the various types of complaints and inquiries received, 34 dealt with improper cemetery maintenance, 30 dealt with deceptive or questionable sales practices, 10 with Truth in Lending matters and other contractual issues, 24 with cemetery rules and regulations, and another 11 with a variety of other issues including simple inquiries into cemetery practices.

The Cemetery Consumer Service Council is now in its 19th year of operation and continues to improve its effectiveness to assist consumers. Last year, a network of contacts was created with the public companies, Service Corporation International, The Loewen Group, and Stewart Enterprises, in order to quickly answer consumer inquiries and address their concerns involving cemeteries owned by these companies. During 1998, the CCSC contacted members of Congress to advise them of the resources that the Council can offer their constituents.

(more)

CCSC is a non-profit organization created in 1979 by the American Cemetery Association (now the International Cemetery and Funeral Association), the Cremation Association of North America, the Central States Cemetery Association and the Southern Cemetery Association. The sole purpose of CCSC is to assist consumers, without charge, in resolving complaints or answering inquiries regarding cemetery services or policies. Participation in the complaint resolution process is voluntary for both the consumer and the cemetery.

Industry members volunteer their time and experience to serve as CCSC representatives in their respective states. The Federal Trade Commission, the U.S. Department of Veterans Affairs, various state consumer protection agencies, and offices of attorneys general are periodically notified of CCSC activities and are among the major sources for consumer referrals. CCSC is listed in the Consumer's Resource Handbook, a U.S. Government publication that is circulated to public libraries and consumer assistance agencies throughout the nation.

Complaints are handled by the state committees with the national CCSC office in the Washington, D.C. area being the overall coordinator of the project and the central contact point. Complaints received by the national office are logged in and each is given a file number for tracking purposes. A copy of the complaint is then forwarded to the appropriate state representative for investigation and action. At that point, many complaints are resolved by telephone and the consumer is promptly notified of the results. It is rare for a cemetery to refuse to participate in the CCSC dispute resolution process. Where no state committee exists, CCSC works with the cemetery board or similar government agency to assist the consumer.

(more)



Cemetery Consumer Service Council
Reston, VA 20195-0028

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SUMMARY

1997 ACTIVITY SURVEY

22 out of 38 State Committees Reporting

Number of Complaints and Inquiries:

a. Pending at beginning of year	<u>6</u>
b. Received during year	<u>107</u>
c. Resolved during year	<u>93</u>
d. Inquiries pending at end of year	<u>14</u>

Categories of complaints and inquiries received:

a. Improper maintenance	<u>34</u>
b. Deceptive sales practices	<u>30</u>
c. Truth-in-lending and other contractual deficiencies	<u>10</u>
d. Rules and regulations	<u>24</u>
e. Other	<u>11</u>

Have any complaints or inquiries received by your committee during the year gone to litigation or other legal action?

No. 19 states. Yes. 1 states

If yes, how many? 3 Case(s).

Check the agencies and organizations that your committee has notified about the availability of its services:

19 attorney general 12 Better Business Bureau 5 local TV station

16 state cemetery 6 Chamber of Commerce 3 newspapers board



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FOR IMMEDIATE RELEASE

CEMETERY CONSUMER SERVICE COUNCIL

RELEASES 1996 ACTIVITY SURVEY DATA

Reston, VA -- December 23, 1997 -- The Cemetery Consumer Service Council (CCSC) has announced the results of its Activity Survey Report for the year 1996. A total of 155 complaints and inquiries were processed during the year. Of that number, 148 were resolved. Twenty complaints and inquiries were pending at the beginning of the year while 7 remained at year's end. These figures are based on the responses provided by 20 of the 38 state CCSC committees. The tally includes totals reported by state cemetery boards to which CCSC refers inquiries and complaints.

Among the various types of complaints and inquiries received, 40 dealt with improper cemetery maintenance, 21 dealt with deceptive sales practices, 15 with Truth in Lending matters and other contractual issues, 72 with cemetery rules and regulations, and another 4 with a variety of other issues including simple inquiries into cemetery practices.

Commenting on the activities of the Council, 1997 CCSC President Frank R. Haswell stated, "CCSC celebrated its 18th year in 1997 by improving its effectiveness to assist consumers. A network of contacts was created with the public companies, Service Corporation International, The Loewen Group, and Stewart Enterprises, in order to quickly answer consumer inquiries and address their concerns involving cemeteries owned by these companies. We are also contacting members of Congress to advise them of the resources that CCSC can offer their constituents."

(more)

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Industry members volunteer their time and experience to serve as CCSC representatives in their respective states. The Federal Trade Commission, the U.S. Department of Veterans Affairs, various state consumer protection agencies, and offices of attorneys general are periodically notified of CCSC activities and are among the major sources for consumer referrals. CCSC is listed in the Consumer's Resource Handbook, a U.S. Government publication that is circulated to public libraries and consumer assistance agencies throughout the nation.

Complaints are handled by the state committees with the national CCSC office in the Washington, D.C. area being the overall coordinator of the project and the central contact point. Complaints received by the national office are logged in and each is given a file number for tracking purposes. A copy of the complaint is then forwarded to the appropriate state representative for investigation and action. At that point, many complaints are resolved by telephone and the consumer is promptly notified of the results. It is rare for a cemetery to refuse to participate in the CCSC dispute resolution process. Where no state committee exists, CCSC works with the cemetery board or similar government agency to assist the consumer.

(more)

SUMMARY
1996 ACTIVITY SURVEY

20 out of 38 State Committees Reporting

Number of Complaints and Inquiries:

a. Pending at beginning of year	20
b. Received during year	135
c. Resolved during year	148
d. Inquiries pending at end of year	7

Categories of complaints and inquiries received:

a. Improper maintenance	40
b. Deceptive sales practices	21
c. Truth-in-lending and other contractual deficiencies	15
d. Rules and regulations	72
e. Other	4

Have any complaints or inquiries received by your committee during the year gone to litigation or other legal action?

No. 19 states. Yes. 1 states

If yes, how many? 1 Case(s).

Check the agencies and organizations that your committee has notified about the availability of its services:

15 attorney general 11 Better Business Bureau 5 local TV station

2 state cemetery board 6 Chamber of Commerce 3 newspapers



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FOR IMMEDIATE RELEASE

CEMETERY CONSUMER SERVICE COUNCIL

RELEASES 1995 ACTIVITY SURVEY DATA

Reston, VA -- December 12, 1996 -- The Cemetery Consumer Service Council (CCSC) has announced the results of its Activity Survey Report for the year 1995. A total of 150 complaints and inquiries were processed during the year. Of that number, 135 were resolved. Twenty-one complaints and inquiries were pending at the beginning of the year while fifteen remained at year's end. These figures are based on the responses provided by 20 of the 38 state CCSC committees. The tally includes totals reported by state cemetery boards to which CCSC refers inquiries and complaints.

Among the various types of complaints and inquiries received, 43 dealt with improper cemetery maintenance, 14 dealt with deceptive sales practices, 12 with Truth in Lending matters and other contractual issues, 42 with cemetery rules and regulations, and another 21 with a variety of other issues including simple inquiries into cemetery practices.

Commenting on the activities of the Council, 1996 CCSC President Daniel R. Scalf, Lexington Cemetery Company, Lexington, Kentucky, stated, "Unlike other consumer transactions, cemeteries maintain an ongoing relationship with the families they serve through the years and decades. Now more than ever during its 16 years of operation, CCSC continues to demonstrate that the industry can resolve almost any problem that a consumer might encounter during that long relationship. Government agencies also benefit because their resources are freed to focus on other issues that are not amenable to industry self-regulation."

(more)

CCSC is a non-profit organization created in 1979 by the American Cemetery Association (now the International Cemetery and Funeral Association), the Cremation Association of North America, the Central States Cemetery Association and the Southern Cemetery Association. The sole purpose of CCSC is to assist consumers, without charge, in resolving complaints or answering inquiries regarding cemetery services or policies. Participation in the complaint resolution process is voluntary for both the consumer and the cemetery.

Industry members volunteer their time and experience to serve as CCSC representatives in their respective states. The Federal Trade Commission, the U.S. Department of Veterans Affairs, various state consumer protection agencies, and offices of attorneys general are periodically notified of CCSC activities and are among the major sources for consumer referrals. CCSC is listed in the Consumer's Resource Handbook, a U.S. Government publication that is circulated to public libraries and consumer assistance agencies throughout the nation.

Complaints are handled by the state committees with the national CCSC office in the Washington, D.C. area being the overall coordinator of the project and the central contact point. Complaints received by the national office are logged in and each is given a file number for tracking purposes. A copy of the complaint is then forwarded to the appropriate state representative for investigation and action. At that point, many complaints are resolved by telephone and the consumer is promptly notified of the results. It is rare for a cemetery to refuse to participate in the CCSC dispute resolution process. Where no state committee exists, CCSC works with the cemetery board or similar government agency to assist the consumer.

(more)

SUMMARY
1995 ACTIVITY SURVEY

20 out of 38 State Committees Reporting

Number of Complaints and Inquiries:

a. Pending at beginning of year	<u>21</u>
b. Received during year	<u>129</u>
c. Resolved during year	<u>135</u>
d. Inquiries pending at end of year	<u>15</u>

Categories of complaints and inquiries received:

a. Improper maintenance	<u>43</u>
b. Deceptive sales practices	<u>14</u>
c. Truth-in-lending and other contractual deficiencies	<u>12</u>
d. Rules and regulations	<u>42</u>
e. Other	<u>21</u>

Have any complaints or inquiries received by your committee during the year gone to litigation or other legal action?

No. 18 states. Yes. 0 states

If yes, how many? 0 Cases.

Check the agencies and organizations that your committee has notified about the availability of its services:

16 attorney general 13 Better Business Bureau 3 local TV station

15 state cemetery board 7 Chamber of Commerce 5 newspapers



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FOR IMMEDIATE RELEASE

CEMETERY CONSUMER SERVICE COUNCIL

RELEASES 1994 ACTIVITY SURVEY DATA

Reston, VA -- December 14, 1995 -- The Cemetery Consumer Service Council (CCSC) has announced the results of its Activity Survey Report for the year 1994. A total of 190 complaints and inquiries were processed during the year. Of that number, 174 were resolved. Nine complaints and inquiries were pending at the beginning of the year while fourteen remained at year's end. These figures are based on the responses provided by 25 of the 38 state CCSC committees. The tally includes totals reported by state cemetery boards to which CCSC refers inquiries and complaints.

Among the various types of complaints and inquiries received, 84 dealt with improper cemetery maintenance, 21 dealt with deceptive sales practices, 12 with Truth in Lending matters and other contractual issues, 47 with cemetery rules and regulations, and another 23 with a variety of other issues including simple inquiries into cemetery practices.

Commenting on the activities of the Council, 1995 CCSC President David Brownworth, Marketing Director of Cedar Memorial Park Cemetery, Cedar Rapids, Iowa, stated, "CCSC is completing its 15th year of volunteer service and has become known as a dependable resource to the public and to Government agencies. The cemetery industry also benefits by our work because we can identify potential areas of concern before they become major problems."

CCSC is a non-profit association created in 1979 by the American Cemetery Association, the Cremation Association of North America, and the Pre-Arrangement Association of America.

(more)

Subsequently, the Central States Cemetery Association and the Southern Cemetery Association added their sponsorship. The sole purpose of CCSC is to assist consumers, without charge, in resolving complaints or answering inquiries regarding cemetery services or policies.

Participation in the complaint resolution process is voluntary for both the consumer and the cemetery.

Complaints are handled by the state committees with the national CCSC office in the Washington, D.C. area being the overall coordinator of the project and the central contact point. Complaints received by the national office are forwarded to the appropriate state committee for investigation and action. Where no state committee exists, CCSC works with the cemetery board or similar government agency.

Industry members volunteer their time and experience to serve as CCSC representatives in their respective states. The Federal Trade Commission, the U.S. Department of Veterans Affairs, various state consumer protection agencies, and offices of attorneys general are periodically notified of CCSC activities and are among the major sources for consumer referrals. CCSC is listed in the Consumer's Resource Handbook, a U.S. Government publication.

(more)



Cemetery Consumer Service Council
Reston, VA 22090

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SUMMARY

1994 ACTIVITY SURVEY

25 out of 38 State Committees Reporting

Number of Complaints and Inquiries:

a. Pending at beginning of year	<u>9</u>
b. Received during year	<u>181</u>
c. Resolved during year	<u>176</u>
d. Inquiries pending at end of year	<u>14</u>

Categories of complaints and inquiries received:

a. Improper maintenance	<u>84</u>
b. Deceptive sales practices	<u>21</u>
c. Truth-in-lending and other contractual deficiencies	<u>12</u>
d. Rules and regulations	<u>47</u>
e. Other	<u>23</u>

Have any complaints or inquiries received by your committee during the year gone to litigation or other legal action?

No. 23 states. Yes. 2 states

If yes, how many? 2 Cases.

Check the agencies and organizations that your committee has notified about the availability of its services:

16 attorney general 14 Better Business Bureau 6 local TV station

17 state cemetery board 11 Chamber of Commerce 6 newspapers



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

REC'D MAY 5 1999

MAY 03 1999

Robert M. Fells, General Counsel
International Cemetery and Funeral Association
Audubon III, Suite 220
1895 Preston White Drive
Reston VA 20191

Re: Freedom of Information Act Request
Cemetery Complaints
FOIA Request No. 1999-665

Dear Mr. Fells:

This is in response to your letter dated April 30, 1999, in which you requested access to copies of complaints received by the Federal Trade Commission concerning cemeteries over a time period covering the last four years.

Your letter requests access to records under the Freedom of Information Act ("FOIA"). That law requires federal agencies, such as the Federal Trade Commission, to release all existing records requested by a member of the public, unless the records fall within at least one of nine specific categories. It is our policy, when responding to an access request, to search for materials that were records of the Federal Trade Commission as of the date on which the access request was received for processing in our FOIA Branch. Your request was received in that office on April 30, 1999.

A search of the Commission's records and discussions with knowledgeable staff failed to locate any records that are responsive to your request. I am sorry we are unable to be of assistance to you in this matter.

For purposes of determining fees incurred to process your request, you have been considered to be a "commercial use" requester, but based upon document search, duplication, and review provisions of the Freedom of Information Act, 5 U.S.C. § 552(a) (4) (A) (ii) (I) and the Commission's Rules of Practice, 16 CFR 4.8 et seq., as amended, there is no charge for the processing of your request.

Mr. Fells - Page 2

If you have any questions about the way your request was handled or about the Federal Trade Commission's regulations related to the FOIA, please contact me on (202) 326-3253. I am the staff member most familiar with your request.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen Milton".

Kathleen Milton
Paralegal Specialist
FOIA Branch, Office of the General Counsel



Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

For Release: July 7, 1999

Now Consumers Can Tell It To The FTC - Toll-Free

A product you bought through an Internet auction months ago still hasn't been delivered. A newspaper ad offers "Guaranteed Loans," but requires a fee up front. A fabulous prize offer comes in the mail, but requires a fee before you can claim it. A scholarship service promises easy money for college - as long as you send in a check.

Sound familiar?

The Federal Trade Commission says even wary and sophisticated consumers face a barrage of fraudulent offers every day. The FTC ought to know: last year, the agency logged in over 60,000 complaints from consumers.

Now, the FTC is making it easier - and cheaper - for consumers to report a fraud to the law enforcement agency through a toll-free Consumer Help Line, 1-877-FTC-HELP (1-877-382-4357). The line is staffed by counselors from 9 a.m. to 8 p.m., Eastern time, Monday through Friday.

According to Jodie Bernstein, Director of the FTC's Bureau of Consumer Protection, the toll-free number offers consumers a two-fer. It makes the agency more accessible to consumers who want to report a fraud, and it makes their valuable complaint data available to law enforcement agencies in the U.S. and Canada. "That's important because fraud has moved beyond the front porch to cyberspace and all points in between," Bernstein said.

Consumer fraud complaints to the FTC are entered into a database that is available to nearly 200 law enforcement agencies in the U.S. and Canada. They use it to spot fraudulent activity, trends and wrong-doers - and stop them.

"Through the toll-free Help Line, consumers can get helpful information on the spot," Bernstein said. "Obviously, the FTC can't intervene in individual disputes, but consumer complaint information is crucial to the enforcement of consumer protection laws. The information that consumers get on a particular issue also lessens the likelihood that they'll be scammed again. Education is a powerful consumer protection."

You can file a complaint with the FTC by contacting the Consumer Response Center by phone: toll free 877-FTC-HELP (382-4357); TDD: 202-326-2502; by mail: Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave, NW, Washington, DC 20580; or through the Internet, using the [online complaint form](#). Although the Commission cannot resolve individual problems for consumers, it can act against a company if it sees a pattern of possible law violations.

<http://www.ftc.gov/opa/1999/9907/tollal2.htm>

7/7/99

The FTC publishes free brochures on many consumer issues. For a complete list of publications, write for Best Sellers, Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave, NW, Washington, D.C. 20580, or call toll free (877) FTC-HELP (382-4357), TDD (202) 326-2502.

MEDIA CONTACT:

Claudia Bourne Farrell,
Office of Public Affairs
202-326-2181

STAFF CONTACT:

Hugh G. Stevenson,
Bureau of Consumer Protection
202-326-3511

(tollfree)



Audubon III, Suite 220
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Toll free: 1.800.645.7700
Fax: 703.391.8416
www.icfa.org
email: gen4@icfa.org

January 19, 2000

Hand-Delivered

Eileen Harrington, Esq.
Associate Director for Marketing Practices
Federal Trade Commission
6th and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: In the Matter of the Funeral Rule Review

Dear Mrs. Harrington:

By letter dated January 6, 2000, FTC Assistant General Counsel James M. Giffin sent the ICFA a supplemental response to its Freedom of Information Act ("FOIA") request, dated April 30, 1999. We had asked the Commission for any complaints it received concerning cemeteries during the last four years. The FTC staff's original response, dated May 3, 1999, stated that "knowledgeable staff failed to locate any records that are responsive to your request." Mr. Giffin's subsequent January 6th response stated that 29 (actually 30) complaints relating to cemeteries from the period of September 1997 to the present were found and that records prior to September 1997 are no longer accessible.

In view of this belated discovery and to avoid prejudice in the rulemaking record, the ICFA wishes to amend its comments including my testimony during the November 18, 1999 public workshop by addressing these complaints. A review of the rulemaking record and consumer complaints submitted to the Cemetery Consumer Service Council not only indicate a low level of complaints overall but virtually none relate to issues covered under the Funeral Rule. This finding has apparently been confirmed by the recent report from the U. S. General Accounting Office ("GAO") on funeral-related industries (pp. 8-13).

The ICFA has compiled a listing of the 30 complaint reports provided by FTC staff. The list and copies of the reports are attached for your review. Please note that three of the reports appear to involve the same complaint, likewise for two others, bringing the total number to 26 or less than one complaint per month over the relevant time period on a national basis. Also, a few complaints do not directly involve the cemetery. Therefore, this low complaint level corroborates our earlier findings.

Mrs. Eileen Harrington
January 19, 2000
Page Two

Of greater importance is the extent to which the complaints would be covered under the Funeral Rule assuming the Rule were extended to include cemeteries. Our review indicates that virtually none of the complaints would be prevented, remedied, or in any way addressed by the Funeral Rule. Possible exceptions exist at Nos. 7 and 25 but a determination is not possible in the absence of additional information. For example, is either cemetery operated as part of a combined funeral home-cemetery operation, thus presumably covered by the Rule presently? Is either cemetery a nonprofit or religious entity, thus raising jurisdictional issues?

We submit that this new data supports the ICFA position that consumer cemetery complaints involving Funeral Rule-related issues are sufficiently isolated as to be statistically equivalent to zero. Corroboration was also found in the rulemaking record through the AARP Mystery Shop Report whereby 96% of the shoppers said that all of their questions about cemetery prices and products were answered and 87% said that they felt no pressure to buy anything. Only 1% reported a great deal of pressure to buy.

For these reasons, the ICFA confirms its position that the Funeral Rule is an inappropriate regulatory vehicle to extend to cemeteries and urges the Commission to refrain from taking this action. We respectfully request that this letter and its attachments be made part of the rulemaking record in this proceeding. Thank you.

Very truly yours,



Paul M. Elvig
Chairman
Funeral Rule Review Subcommittee

Attachments

cc: Alan Hile, Esq.
Myra Howard, Esq.

FTC Cemetery Complaints

September 1997 - January 2000

<u>Reference No.</u>	<u>Comments</u>
1. 762522	Nonprofit cemetery restricts types of vaults it permits.
2. 759551	Monument retailer entered into sale with consumer who is restrained by court order from entering into contracts, complicating authorization.
3. 757857 732741 722082	Free space offer by cemetery. This complaint appears to have been filed three times.
4. 753530	Grave site filled with water. The complaint appears to involve a funeral home and a vault company, not the cemetery.
5. 741141	Funeral home/cemetery employee alleges employer is engaging in bait and switch tactics in sale of vaults.
6. 721287	Consumer wants refund because no grass is growing on mother's grave.
7. 707132	Cemetery selling caskets without a price list. No other information given.
8. 686006	Unknown type of seller sold urn and crypt to consumer who later wanted substitution of merchandise, then cancellation of contract.
9. 658138	Complaint against funeral director and a Catholic cemetery for not closing grave after burial.
10. 653972	Cemetery has \$725 non-declineable service charge; details unclear.
11. 633379	Daughter paid burial fee after parents' death. Parents owned the lots. Details unclear.
12. 626561	Consumer dislikes new cemetery owners, they want more money. No details.

13. 622944 Municipal cemetery requires funeral director to be in attendance at grave side service.
14. 601595
572455 Consumer didn't realize that she was buying a marker when buying a lot; not advised of her rights. Seems to be same complaint.
15. 593033 Consumer bought marker from retailer but must pay cemetery to install it on grave site.
16. 513260 Cemetery changed the required dimensions of its markers since consumer purchased it - but purchased from where and when?
17. 512987 Mishandling of body shipped from Tennessee to Kansas; seems to involve a funeral home.
18. 511673 Funeral home has a discount arrangement with a cemetery for at-need arrangements; details unclear.
19. 480480 Consumer was overcharged by cemetery - for what? No details.
20. 455519 Vault dealer complains that cemetery is exclusive seller of vaults in its own cemetery.
21. 452014 Cemetery assesses uniform fee regardless of who installs markers; no additional details.
22. 448521 Cemetery won't allow consumer to resell block of graves he bought in the 1960s. Also, cemetery failed to notify consumer when a relative was being buried.
23. 429440 Harassment; no details.
24. 385823 Casket retailer gives away a free marker with every casket purchased (!). Cemetery requires that markers must be purchased from it.
25. 363243 Cemetery has deficient funeral price list (?). No details.
26. 331166 Cemetery continues to telephone sick person disregarding requests to place on Do-Not-Call list.

"It was a beautiful funeral in every respect."

*FIP Respondent
Widow, age 70*



"I had to take out a loan, and then pay it back with insurance proceeds."

*FIP Respondent
Widower, age 59*

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Introduction

Purpose of this booklet

This booklet has been designed as an introduction to final arrangements for individuals and families.

In the booklet you will find basic information about options for final arrangements, and costs. "Final arrangements" is an umbrella term that includes decisions regarding what is to happen to the body following death (for example, burial or cremation) and what services or merchandise may be purchased to help acknowledge the death and celebrate the life. After reading this information, please consider discussing your preferences with your family.

Although price information is included, please be aware that there are enormous variations around the country and even within one city. Depending on what is purchased, final arrangements can cost under \$200 or over \$15,000. This booklet can provide an idea of costs, and can help you understand the questions to ask about costs and options in your town.

The Funeral Information Project (FIP) Study

Much of the information in this booklet was contributed by families who recently faced the death of a loved one age 50 or older. In fact, 163 such families in the Kansas City area completed a questionnaire in the fall of 1995. They answered questions such as how final arrangement decisions were made, by whom, at what cost, and the satisfaction with the merchandise and services purchased.

In addition to information from families, the booklet reflects information from many meetings and conversations with funeral directors, hospice counselors and volunteers, county extension specialists, Widowed Persons Services, hospital chaplains, and Funeral and Memorial Societies.

The information was gathered as part of a year research project, "The Funeral Information Project" (FIP), located at the University of Kansas Medical Center, Center on Aging. Financial support from the AARP Andrus Foundation.

Even if you choose not to pre-plan your own final arrangements, reading this booklet will help if you are called on to make arrangements on behalf of someone else.



Final Arrangements: A Unique Purchase

The purchase of final arrangements differs from most other consumer purchases for the following reasons:

- **EMOTIONAL OVERLOAD:** Facing the very recent death of a loved one can be emotionally overwhelming. Some people report not remembering making the final arrangements, even though they know they did.
- **DECISIONS ARE FINAL:** Once a body has been buried it is difficult, although not impossible, to move the casket to a different location. Cremation cannot be undone. The finality of these decisions can add to the weight and burden felt by survivors, if they are uncertain about what to do.
- **FINAL COSTS CAN BE EXPENSIVE:** Typical costs for funeral and burial arrangements can run \$3,000 - \$6,000. Discussing final arrangement options, costs and preferences with your family can help alleviate some of the stress and unfamiliarity that survivors often face. It is often much easier to make emotionally and financially sound decisions prior to a death in the family, than following one.
- **LACK of TIME:** If the decisions were not made before the death, the survivors may find themselves making major decisions within a few hours. Over 90 percent of FIP families reported that their meeting with the funeral director lasted between one and two hours. Planning a wedding or other family event generally allows for months of considering options, discussions, and price comparisons; planning a funeral after the death has

occurred generally happens during 1-2 hours within 24 hours of death.

- **LACK OF FAMILIARITY:** In the FIP study of 163 families who had recently experienced the death of a loved one age 50 or older, one-third of the people who were responsible for making or for overseeing the arrangements had no experience meeting with a funeral director. Forty-six percent had no experience with cemetery decisions. In 41 percent of cases, an *adult child* was the key person responsible for making or for overseeing final arrangements (in the FIP study, adult children ranged in age from 22 to age 70).

Table 1 lists the percentage of FIP respondents who had no idea what to expect in terms of costs, before they met with the funeral director. About half of the sample was not familiar with the price of commonly purchased merchandise and professional services.

Table 1

Knowledge of Costs: FIP Study, 1995

Before meeting with the funeral director, did you have any idea what the costs would be for these items:

Item	% who had no idea
Caskets	46%
Vaults	59
Flowers	45
Cemetery Space	44
Open/Close a Grave	63
Grave Marker	56
Transport the Body	69
Total Arrangement	52



Costs

Decisions about final arrangements can be personal, emotional, and meaningful. They can also be the third most expensive consumer purchase of a life time, following that of a house and a car.

Make no mistake, there are huge variations in final arrangement costs.

(See page 4.) Costs vary based on: final disposition of the body (burial, entombment, cremation or donation); professional services purchased; merchandise purchased; and overhead and profit margins of the funeral home, crematory, and/or cemetery.

In the FIP study of 163 Kansas City area families, final costs ranged from a low of \$145 to a high of \$14,000. In the \$145 situation, the body was donated to the local medical center and the \$145 was paid to a funeral home to transport the body from the place of death to the medical center. The family that reported final arrangement costs of \$14,000 indicated that a \$4,500 casket and a \$4,000 vault were purchased. *FIP results indicate that, in general, families who discuss final arrangements prior to the death had much lower costs than families who did not.*

As shown in Table 3, many FIP families did not know how the prices paid compared to the value of the merchandise and services purchased. By visiting several funeral homes and cemeteries, you will develop a sense of costs and value.

"I was in no condition to make \$6,000 worth of decisions."

*FIP Respondent
Widow, age 61*

Table 2

Average Final Costs

FIP Study (Kansas City, 1995), 163 families	
Funeral home/casket burial (includes cemetery costs)	\$6,500
Funeral home and cremation	\$2,300
Direct cremation (no services)	\$1,150

Federated Funeral Directors of America (1995) 1,500 privately-owned funeral homes in U.S.	
Funeral home average gross sale to family (adult funeral) (excludes cemetery costs)	\$5,436

Source: American Funeral Director, June 1996, p.22

Funeral Management Service (1995) based on 300 firms in eastern U.S.	
Funeral Home and casket cost for burials (excludes vault and cemetery costs)	\$4,067
Cremation sales (excludes urn)	\$1,522

Source: American Funeral Director, July 1996, P.19.

Table 3

Prices Compared to Value: 1995 FIP

How did the prices compare with the value of merchandise and services purchased?

	At Funeral Home	At Cemetery
Prices matched value	62%	49%
Paid more than we should have	11%	14%
Received more than we paid for	3%	3%
I do not know	24%	34%
	100%	100%

Table 4
Range in Cost for Funeral Home Merchandise and Professional Services
Summary of prices from 60 of the 62 Kansas City Area Funeral Home, General Price Lists (GPL): 1995.
(See page 13 for description of GPL.)

10/30/95 Service	Minimum	Maximum	(Average)* Median
Basic staff service and overhead	\$365	\$3,440	\$975
Embalming	150	620	328
Transfer body to funeral home (50 miles)	0	385	120
Charge per mile (over 50 miles)	1	2	2
Use of facilities for viewing/visitation	90	480	203
Funeral service at funeral home	100	795	298
Memorial service at funeral home 100	775	295	
Graveside service (equipment & staff)	65	3,440	200
Hearse	80	350	150
Limousine	75	170	110
Caskets:			
Lowest price listed	30	1,415	495
Highest price listed	1,450	18,000	6,939
Outer burial containers (vaults, graveliners)			
Lowest price listed	280	745	495
Highest price listed	700	16,050	2,593
Forward remains to other funeral home	190	2,305	1,100
Receive remains from other funeral home	450	3,440	1,050
Direct cremation-minimum container**	395	1,910	1,150
Immediate burial-minimum container**	495	3,500	1,480
Other Prep of Body	0	375	104
Reconstruction	0	125	52
Cosmetising	35	150	62
Hair Styling	25	45	30
Dressing/casketing	50	175	90
Autopsied remains	25	295	75
Wash & disinfect w/o embalming	30	180	85
Refrigeration	0	550	95
Cremation fee	100	1,000	240
Alternative/minimum container**	0	525	110
Rental casket	250	650	438

* Median = half the prices were less, half were more expensive.

** Minimum container = Container other than casket, such as heavy cardboard or pressed wood box.

The GPL's were collected by volunteers of the Funeral and Memorial Society of Greater Kansas City.
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Should I Pre-Pay?

This straightforward question is not easy to answer. The correct answer may depend on your financial situation (and that of your survivors), your desire to assume responsibility for your own arrangements, and the state in which you live. Consumer protection laws governing pre-need insurance and pre-need trust plans (discussed later) vary from state to state.

The terminology around pre-payment can be confusing: pre-pay, pre-need, pre-plan, pre-arrange! There are no hard and fast definitions

"I hesitate to pre-pay because I don't know where I will be when I die. If I die on vacation, just cremate me there."

*FIP Respondent
Widower, age 67*

for these terms. Pre-arrange and pre-plan can mean simply communicating your wishes in writing or verbally, without pre-paying. Pre-paying can mean setting aside funds in advance of death for final arrangement expenses. *Pre-need is a special type of pre-payment.* Pre-need is a term coined by the funeral industry for insurance plans and trusts that are sold by funeral homes, cemeteries, and insurance agents.

Whether or not you pre-pay, most funeral homes will allow you to keep your preferences on file with them. Whether or not you pre-pay, you should discuss your plans with your family.

Some people pre-pay their cemetery space, but not the funeral home...or vice versa. Some

people set funds aside but maintain control over the money in case they need it in an emergency. Others select the casket and vault and pre-pay the funeral home. Some people prefer to let their survivors handle all the decisions and all the expenses.

When pre-payment works, it works well. When pre-payment doesn't work, it can be a nightmare for the purchaser or the survivors. If you are considering purchasing a funeral home or cemetery pre-need plan ensure that you understand the risks, your rights, and to what you are entitled. Ask the salesperson to define how terms are being used. If you are not inclined to learn all the facts, you may be better off setting the funds aside in a bank account or a certificate of deposit and using the accrued interest to keep up with inflation.

EXAMPLES OF PRE-PAYMENT METHODS

Bank Account: A "payable upon death" bank account can be established in the account holder's name with the name of a survivor listed as the person who should receive the money upon the death of the account holder. While alive the account holder (and only the account holder) has complete control over the funds. Upon the death of the account holder, the named beneficiary has complete control over the funds. The survivor could then take the money in the account and pay the final arrangement costs.

Regular Life Insurance: Typically a family member is designated as the beneficiary. That family member can use part of the money for funeral and burial-related costs. If survivors can

document that a life insurance policy exists, some funeral homes will file the claim for the insurance, and wait to be paid. Life insurance allows survivors to select and purchase the merchandise and professional services they want (or that have been pre-suggested by the decedent) without actually paying the funeral home or the cemetery ahead of time.

Life Insurance for Final Expenses: On television, in the mail, and in the newspaper, these small life insurance plans are marketed to older people for final expenses. The death benefit is usually less than \$10,000. In some cases, you end up paying more in premiums than your survivors will receive in benefits.

Bank Trust: You can set up a bank trust fund for final arrangement costs. You can decide who the beneficiary of the trust will be upon your death, a family member or a funeral home. If you set up a "revocable" trust you can remove the money at any time, for any reason. If the trust is "irrevocable" no one—not even you—will be allowed to use the funds for any purpose other than what is stated. When applying for public assistance for nursing home care, many states allow funds to be set aside for final expenses. Often, these funds must be placed in an irrevocable trust.

PURCHASED FROM THE FUNERAL/ CEMETERY INDUSTRY

Final arrangements are purchased either "pre-need" or "at need." "Pre-need" refers to purchasing all or part of funeral home or cemetery costs before death. Two types of pre-need plans are: 1) state regulated trusts, and 2) insurance plans. Call your Funeral Home Regulatory Board for information about pre-need laws in your state.

An advantage of a pre-need plan is that the purchaser can specify (and pay for) the type of final arrangements desired, thereby reducing the stress on survivors. Of course, you can always communicate your preferences without a pre-need plan. A disadvantage is that you give up control of your money.

Pre-Need Trust Plan: These plans can be sold by funeral homes or cemeteries. The purchaser selects the type of service and merchandise desired, and pays the funeral home or cemetery. By paying in advance of death, the purchaser may be able to "lock in" today's prices, and not worry about what inflation might do to final arrangement costs in the future. The purchaser

may be responsible for paying taxes on the interest earned by the trust.

It is always appropriate to pre-plan (discuss); but be careful how you pre-pay.

State laws specify what the funeral home must do with the money received from selling pre-need funeral trust plans. In some states, 100% of the funds must be put in a bank trust (best deal for the consumer), in other states less than 100% (perhaps 60% or 80%) must be trusted. The amount of money trusted is the amount of money you can get back if you change your mind, or if the funeral home goes bankrupt. Any money not trusted can immediately be used by the funeral home for whatever purpose they so choose. Any money not trusted may not be returned to you if you change your mind and cancel the contract.

"The casket chosen at the time of pre-arrangement was no longer available - had to pay an additional \$734."

*FIP Respondent
Adult Child, age 38*

Pre-Need Insurance Plan: From the consumer's point of view, these plans can seem very similar

to the pre-need trust plans. There are some important differences.

With an insurance plan, the purchaser may have to answer some health questions. With the insurance plan, the purchaser does not pay any annual taxes on the accrued interest.

Important points to consider before purchasing pre-need trust or insurance plans:

Before your pay (lump-sum or in payments) for a pre-need plan, make sure you understand the answers to these questions:

- What happens to the money I pre-pay? Make sure you get official documentation of where your funds are deposited.
- How much time do I have to reconsider my purchase and receive a FULL refund?
- What happens to my money if the funeral home is purchased by another funeral home or goes out-of-business?
- What happens if I die away from home?
- Even if I pre-purchase this funeral (or cemetery) plan, what expenses will my survivors have to pay later? What's not covered?
- Am I pre-paying for specific merchandise that the funeral home (or cemetery) will store until it is needed (such as a particular casket

"If you can, make all the arrangements ahead of time; it's easier on the family."

*FIP Respondent
Adult Child, age 34*

or vault) or will my survivors choose the particular casket or vault based on what is available at the time of death?

For a much more detailed explanation of pre-need options and costs, refer to the AARP publication, Product Report: Pre-paying Your Own Funeral? and to a very well-written chapter, "Pre-Need Arrangements" in the book Final Choices: Making End-of-life Decisions. (See back cover for instructions on how to order.)

"We did pick a fairly expensive casket, but I was stunned at the total funeral costs."

*FIP Respondent
Widower, age 59*

Table 3

Is making funeral arrangements before death helpful to survivors?

No	9%
Somewhat	24%
Extremely Helpful	67%

FIP study, 1995.

"Cemetery costs were so confusing, because all the pre-need had not been paid. Some money has gone into one fund, some into another."

*FIP Respondent
Widow, age 69*



Four Key Decisions Following a Death



There are four key sets of decisions that follow most deaths:

1. *What to do with the body.*
2. *Merchandise and services to be purchased. (Typically from a funeral home and/or cemetery.)*
3. *Ceremony to acknowledge the death and celebrate the life.*
4. *Ideas for memorializing the life following the ceremony.*

Having a Family Discussion

"Whoever is left behind has a lot to do."

*FIP Respondent
Adult Daughter, age 61*

A FIP respondent wrote that in her opinion the best time to discuss final arrangement preferences was at a family picnic "with the sun shining and everybody healthy." She reasoned that once serious illness strikes it may be too painful to discuss.

In addition to talking with your family, it is a good idea to learn about your local options by talking with two or more funeral directors, cemetery representatives, a representative from your place of worship, and perhaps a friend who has recently faced these decisions. Check to see if there is a Funeral and Memorial Society in your area.

"She said she couldn't talk about her own death, so I asked her questions about other funerals she had attended to get an idea of what she wanted."

*FIP Respondent
Niece, age 46*

As you educate yourself on the options and come to a sense of your preferences, talk with your family about the four sets of decisions mentioned above. With each set of decisions consider:

- A. When should the decision be made (before or after the death)?
- B. Who should be involved in decision-making?
- C. What is our estimated budget for final arrangements?
- D. How should the costs be paid?

It is a good idea to review your plans every five years. If you have no preferences for what is to happen after your death, make sure you communicate this to your survivors.



1. What to do with the Body

Basically the same options exist today that have been around for thousands of years: earth burial, entombment (above the ground), and cremation. Added to that list is a fourth option: body donation to a medical school. In the U.S. three-fourths of bodies are buried in a casket, while 21 percent are cremated.

In most states, the next-of-kin has "custody" of the body after death. Make sure your family understands—and accepts—your final disposition wishes.

Note that funeral homes are required to ask survivors for permission, before they embalm the body. Embalming is not usually necessary if the body is to be buried or cremated within 24 hours of death. State laws on embalming vary.

"If costs are an issue, ask for a cloth-covered casket. Don't be afraid to ask questions. Bring someone who isn't emotionally involved."

*FIP Respondent
Widower, age 78*

EARTH BURIAL

The body, embalmed or unembalmed, is placed in a casket (generally made of wood, metal, cardboard, or fiberglass) and placed in a grave plot. The cemetery may or may not require an outer burial container (see page 17) to support the earth surrounding the casket.

The average cost reported by families in the FIP study was \$6,500 (including both funeral home and cemetery costs), ranging from \$730 - \$14,000.



ENTOMBMENT

The body, embalmed or unembalmed, is placed in a casket which is placed inside a crypt in an above-ground mausoleum. Mausoleums are generally made of granite or marble. The price for a family mausoleum, or for a crypt in a multi-family mausoleum varies enormously. Average costs can be similar to earth-burial costs, or can be much higher.

A lawn crypt is a grave plot that contains a built-in vault or grave liner. Lawn crypts can be single or double depth.

CREMATION

The body, embalmed or unembalmed in a casket, a plain wood box, or heavy cardboard container is placed inside the crematorium. Extreme heat produced by oil or gas flames dehydrates the body in a matter of hours leaving only teeth and bone fragments of various size. These fragments are usually then pulverized to the size of coarse sand. Some crematories can crush the 5-7 pounds of bone fragments into ashes, if requested. Pace makers must be removed (usually by a funeral director) prior to cremation. A full funeral service (including an open-casket viewing) may precede the cremation. Many funeral homes will rent a casket (\$300 - \$1,000) for the funeral and then the body is placed in a less expensive container for cremation.

Nationally, about 90% of cremations are casketless according to the Cremation Association of North America. The average cost reported by families in the FIP study was \$2,300 (includes funeral home and crematory costs), ranging from \$640 - \$6,275.

Percentage of Deaths that are Cremated: 1995

U.S.	21%
-------------	------------

High Cremation Rates

Hawaii	56%
Alaska	54
Nevada	54
Washington	53
Montana	45

Low Cremation Rates

Tennessee	6
W. Virginia	6
Kentucky	5
Mississippi	4
Alabama	4

Source: Cremation Association of North America.

BODY DONATION

Bodies donated to science are vital to the educational process of health professional students. Donated bodies are also used for research purposes. Check with your local medical school to ensure they accept bodies and under what conditions. The medical school will let you know if there are any costs associated with body donation. Most schools prefer that the paperwork be completed by the person who intends to donate his/her body.

After a year or two of using the body for teaching or research purposes, most body donation programs cremate the remains and either return them to the family, or bury them in a common grave. Many medical schools require that the body be brought to the school unembalmed. If you plan to have a funeral service with the body present, tell the funeral director of your intentions to donate the body.

Cost: Families in the FIP study report paying transportation charges from the place of death to the medical school (between \$145- \$500).





2.a. Merchandise and Professional Services

"On her death bed she made me promise not to have an open-casket if she looked like hell. She looked good. Hats off to the cosmetician."

*FIP Respondent
Sister, age 64*

At the funeral home, how well did the staff treat the family (were you treated with respect, dignity, and concern)?

Treated very well	94%
Treated OK	5%
Treated poorly	1%

FIP study: 1995

"Don't make decisions alone. I went with my sister and husband. We discussed the options."

*FIP Respondent
Adult Child, age 46*

Most people in the U.S. purchase final arrangement services and merchandise from a funeral home. Not all, but most. Your other options include dealing directly with a body donation program or a crematorium. Some families choose to care for the body themselves and hold a service themselves. They may wash the body, dress it and build their own casket.

The most "family-friendly" funeral homes will provide services and merchandise to the extent the family chooses. That typically means the funeral director is very involved in body preparations and with the funeral service. It can also mean that the funeral director limits his/her role to simply assisting with paperwork, if that is what the family wants.

If you feel you are being pressured into purchasing merchandise or professional services you do not want, or that you would rather provide yourself, consider switching funeral homes.

Since 1984, the Federal Trade Commission (FTC) has regulated the sale of funeral merchandise and services, through the "Funeral Rule." These rules apply only to establishments that sell BOTH funeral goods and services; therefore the Funeral Rule does not generally apply to cemeteries. Here are its main provisions as summarized from the FTC's booklet, Complying with the Funeral Rule (June 1994):

- The Funeral Rule requires funeral homes to give consumers accurate, itemized price information (for 16 items) in the form of a "General Price

The cost of a funeral is not related to its meaningfulness.

List." On pages 13-15 you will find a sample of a General Price List. You should be able to stop in at any funeral home in the country and receive their General Price List (GPL). All GPLs are required to contain much of the same information. The format and the prices will vary. Consider collecting two or more GPLs to get an idea of the available options and costs at funeral homes. On page 4, we list itemized

at the Funeral Home

prices found on 60 GPLs collected in the Kansas City area in 1995. As you can see, prices vary enormously from funeral home to funeral home.

- The Funeral Rule prohibits funeral homes from misrepresenting legal, crematory, and cemetery requirements.
- The Funeral Rule prohibits funeral homes from embalming for a fee without permission from the family or responsible party.
- The Funeral Rule prohibits funeral homes from requiring the purchase of a casket in the case of direct cremation (when the body is picked up from the place of death and directly taken to the crematory without having any funeral services with the body present). [Note: the crematory can require that the body is placed in a rigid container such as a plain wood box.]
- The Funeral Rule prohibits funeral homes from requiring that consumers buy certain funeral goods and services as a condition for furnishing other funeral goods and services. This

includes prohibiting funeral homes from charging families a fee if the family purchases the casket elsewhere or wants to use a casket they have made.

- The Funeral Rule prohibits funeral homes from engaging in other deceptive or unfair practices.

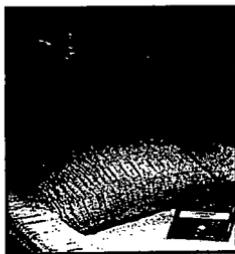
Information on how to order your own copy of Complying with the Funeral Rule, is on page 20.

Caskets

Five factors determine the price of a casket; the external material (metal, wood, fiberglass, cardboard); the interior lining; the hardware (hinges and handles); the method of construction; and the seller's markup. Caskets can be sealed or not sealed against water. Few casket seals keep water out "forever." Your attitude about death may influence your casket selection. Are you buying a casket mainly for display for 2-3 hours? Are you buying a casket to "protect" the body? Think about what a casket means to you before you purchase.

Consumer Concerns & Complaints

Funeral home and cemetery complaints are generally handled at the state level. To discuss a concern or learn where to file a complaint, call the state Funeral Home Regulatory Board. Depending on the nature of the concern, they may handle it or may suggest you contact the State Attorney General's Office, the Cemetery Regulatory Board (if there is one), the Better Business Bureau, the state insurance commissioner (for pre-need insurance violations), or a private attorney.





Sample General Price List

[Adapted from: The Federal Trade Commission's booklet, "Complying with the Funeral Rule" (June 1994).] Sentences in italics have been added by the FIP project for the benefit of consumers. For an idea of the price range for each item, see page 4.

ABC Funeral Home
100 Main Street
Yourtown, USA 12345
(123) 456-7890

These prices are effective as of: _____

The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. However, any funeral arrangements you select will include a charge for our basic services and overhead (see #1). If legal or other requirements mean that you must buy any item you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.

1. Basic Services of Funeral Director and Staff \$ _____
Includes: conducting the arrangements conference; planning the funeral; consulting with family and clergy; shelter of remains; preparing and filing necessary notices; obtaining necessary authorizations and permits; coordinating with the cemetery, crematory, or other third parties. In addition, this fee includes a proportionate share of our basic overhead costs.

This fee for our basic services and overhead will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)

2. Embalming \$ _____
Except in certain cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial.
3. Other Preparation of the Body \$ _____
(list individual services and prices, examples: care for autopsied remains, reconstruction, hair care, etc.)
4. Transfer of Remains to the Funeral Home \$ _____
(Within _____ miles of the funeral home)
Beyond _____ miles, we charge _____ per mile
5. Use of Facilities and Staff for Viewing at the Funeral Home \$ _____
6. Use of Facilities and Staff for Funeral Ceremony at the Funeral Home \$ _____

-
7. Use of Facilities and Staff for Memorial Service at the Funeral Home (without the body present) \$ _____
8. Use of Equipment and Staff for Grave Side Service \$ _____
This may be purchased in addition to a ceremony held at the funeral home, place of worship, or other place; or it may serve as the only ceremony purchased from the funeral home. Equipment includes use of: _____
9. Hearse (for transporting the casketed body) \$ _____
(CONSUMER NOTE: There may be additional charges each time the body is transported, for example: from funeral home to a church for an evening wake service; from the church back to the funeral home for the night; from the funeral home to the church for a morning funeral service; from the church to the cemetery.)
10. Limousine (for transporting family and friends) \$ _____
(See note above for possible additional transportation charges. Ask for clarification if not clear.)
11. Caskets from \$ _____ to \$ _____
A complete price list will be provided at the funeral home.
12. Outer Burial Containers from \$ _____ to \$ _____
(CONSUMER NOTE: Many (but not all) cemeteries require that caskets, and sometimes even cremation urns, be buried in an outer burial container, commonly called a graveliner or a vault. See page 16.)
13. Forwarding of Remains to Another Funeral Home \$ _____
Includes: Basic services of the funeral director and staff, and overhead costs (see #1); removal of remains; embalming or other preparation of remains—if relevant; and local transportation.
14. Receiving Remains from Another Funeral Home \$ _____
Includes: Basic services of the funeral director and staff and overhead costs (see #1); care of remains; transportation of remains to funeral home and to cemetery or crematory.
15. Direct Cremation (no ceremony) \$ _____
Includes: Basic services of the funeral director and staff and overhead costs (see #1); removal of remains; transportation to crematory; necessary authorizations; and cremation if relevant. *(CONSUMER NOTE: At some funeral homes you will be charged a "cremation fee" in addition to the direct cremation charges.)*
- If you want a direct cremation you can use an "alternative container" or "minimum container" rather than a casket. Alternative containers encase the body and can be an unfinished wood box or made of materials like fiberboard or composition materials (with or without an outside covering). We provide containers made of: _____
- A. Direct cremation with container provided by purchaser \$ _____
- B. Direct cremation with container made of: _____ \$ _____
-

C. Direct cremation with container made of: _____ \$ _____

16. Immediate Burial (no ceremony) \$ _____

Includes: Basic services of funeral director and staff, and overhead (see #1); removal of remains; and local transportation to cemetery.

A. Immediate burial with casket provided by purchaser \$ _____

B. Immediate burial with alternative container (see explanation in #15) \$ _____

C. Immediate burial with cloth covered wood casket \$ _____

Other items you might see on a General Price List:

Cost for body refrigeration (for unembalmed bodies)

Casket rental charges

Discounts for infant deaths

Guest books, crosses, rosaries, etc.

NOTE: The cost of clothing and flowers are not generally included on General Price Lists.

Federal regulations require funeral homes to provide a copy of their "General Price List" to any one who asks for it in person. (Many funeral homes will mail you a copy, although they are not required to by law.) If you phone a funeral home and request it, they are required to provide cost information over the phone.

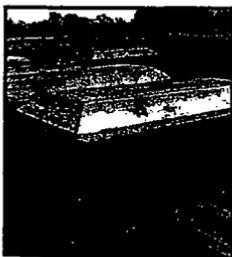
Also ask to see their "Casket Price List" and "Outer Burial Container Price List."



2.b. Cemetery Merchandise & Services

"I had no idea what cemetery prices should be."

*FIP Respondent
Widower, age 58*



Vaults help support the earth around the casket from sinking.

Unlike funeral homes, there are no federal laws or rules regulating the sale of cemetery merchandise and services. Cemeteries have enormous flexibility in setting their own policies and prices. Some states do have special consumer-protection laws that apply to cemeteries. If you have questions or a complaint, call your state's Cemetery Licensing Board or the Attorney General's office.

CEMETERY SERVICES

The primary services provided by the cemetery staff are included in the phrase "opening and closing of the grave." This generally includes preparing the paperwork, verifying the location of the grave plot (or mausoleum or cremation niche), digging the hole, setting up chairs and tents at the grave side, meeting the processional at the cemetery entrance, being present during grave side service, operating the machinery to lower the casket into the grave, replacing the dirt, and sodding the area.

Opening and closing costs vary. Typical city cemetery opening and closing costs range from \$200 - \$800. Expect to pay a higher fee for weekend services. Many pre-need plans *exclude* the opening and closing costs. Many cemeteries require that the family pay in full, and sometimes in cash, before any services are rendered.

CEMETERY MERCHANDISE

Types of spaces:

■ **Grave plot for casket**

Ask if you will be allowed to bury two bodies in one plot (double decker). You may be allowed to bury one or more cremated remains in a grave plot that contains or will contain a body.

■ **Crypt space in a Mausoleum building**

Mausoleums may contain exterior and/or interior crypts. Families may be allowed to place cremation urns in a crypt that contains or will contain a body.

■ **Cremation niche in a columbarium**

The columbarium may be a building or a wall containing niches for individual cremation boxes or urns. Depending on the size of the niche, and the cemetery's policy, you may be allowed to place 2 or more urns in one niche.

Burial containers
Many cemeteries require outer-burial containers for in-ground burial of caskets and sometimes for in-ground burial of cremation containers. An outer-burial container (OBC) is designed to keep the closed grave from sinking as the earth settles. Without an OBC, cemetery workers in heavy equipment can be injured as they drive over sinking ground. There are no state laws requiring the purchase of OBC's.

In general, there are two types of OBC's: grave liners and vaults. Grave liners are not sealed, vaults are sealed. A typical grave liner is made from reinforced concrete and costs between \$400 - \$600.

A vault can be concrete, metal, or fiberglass. Whereas the grave liner's purpose is to support the surrounding earth, a vault is designed to support the earth *and* to protect the casket. The natural process of body decomposition occurs in both types. Communicate your preferences to your family. This can be a very emotional and expensive decision.

Vaults can run between \$800 - \$2,000, although you can find them for thousands of dollars more. Bronze vaults can cost \$15,000.

Grave markers

Cemeteries may require or prohibit certain types of grave markers. Mausoleum crypts and cremation niches usually include a marker. You may purchase a grave marker from a cemetery, a funeral home, or an independent monument sales office. Expect to pay an additional \$100 or more to have the marker placed.

Families should realize that they have plenty of time (weeks, months, even years) to make a decision on a permanent grave marker. You should not feel rushed into making this decision. Of all the final arrangement decisions to be made around the time of death, this is the one that can be postponed.

Some people pre-plan the type of marker they would like for themselves, and some pre-pay for it. You can even have the marker engraved and placed on the grave plot years before the death. At the time of death, the death date can be added.

Types of grave markers

Monument: sits upright and indicates a family section of the cemetery, or information for an individual or couple. If the monument contains only the family name, then each individual plot will generally have a head or foot stone

listing the individual's name. Most monuments are made of granite. Prices vary based on color, size, the number of sides that are polished, and the amount of engraving. Price range: \$500 - \$8,000.

Other choices include granite "Beveled Markers" (taller in the back—maybe 6 inches) and tapered in the front (4 inches); or "Wedge/Slant" granite markers (6-12 inches tall and 4 inches wide).

Grass marker: is placed flat against the ground, set on a bed of granite or cement. Some cemeteries require grass markers because it makes mowing much easier. Grass markers are usually made of granite or bronze.

Price range:

Granite \$200 - \$15,000
Bronze \$450 - \$2,000

Veteran's Benefits

The Veteran's Administration (VA) currently provides grass markers for honorably discharged veterans. Qualified vets (and their spouse) may be eligible for free burial in a VA cemetery. Survivors will need to show documentation of the veteran's discharge status before receiving these benefits. Call the VA for details.



3. The Ceremony

One of the ways in which humans are distinguished from other animals is that we care for our dead. Ceremonies help survivors face the death of a loved one, celebrate his/her life, and often are designed as a "send-off" for the loved one.

Funeral services (or memorial services at which the body is not present) can be held in a variety of places, for example:

- Funeral Home
- Place of Worship
- Cemetery (chapel or at grave side)
- Personal Home (which was the custom prior to the turn of the century)
- Park or Garden

Many families host more than one ceremony.

Services can include a slide show or video of the person's life. Selecting meaningful music, spiritual readings, or poetry can enhance a service. Inviting friends and family to stand and say a few informal comments about the life of the deceased can be very helpful to survivors.

Factors that influence the type of ceremony include: religious background, ethnicity, local customs, circumstances surrounding the death, and the preferences (including knowledge of options) of the persons planning the ceremony.

"Family and friends are so important during the funeral services and after. It's a very difficult time. Friends need to remember their support and love are needed for months after the funeral. It's so hard getting over the loss."

*FIP Respondent
Widow, age 73*

Adding meaning to the funeral service: FIP, 1995

*In your opinion, what helps to make a funeral or memorial service meaningful?
(Respondents can choose as many as appropriate).*

Adds Much Meaning:

Having people talk with me about my loved one	73%
Having photos and mementos at the service	40
Having the casket open for viewing	55
Having music at the service	84
Having clergy speak at the service	87
Having friends/family participate in the service by speaking about the life of the deceased	55

4. Memorializing the Life After the Ceremony

Some people end up spending a lot of money on final arrangements out of a sense of guilt or love or just wanting to do *something* to honor the deceased.

There are many ways to keep the memory of a loved one alive and to honor his/her memory. Some ways necessitate money, others don't. Here are some ideas:

- write a detailed obituary (a gold mine for family tree researchers);
- compile a detailed funeral program (consider including photos);
- make a video including photos or slides of his/her life;
- donate money or time to a favorite community group, charity, religious institution, or research organization;
- plant a tree, or rose bush at a local church or park;
- donate books, clothing, furniture, etc. to charity;
- establish a scholarship or bookfund at a local school or college;
- put up a plaque in a park, golf course, or backyard;
- write a story summarizing how the person has affected your life, share it with family and close friends.

"After my second husband died, I thought I would have to wait until his children gathered to get all the information for the obituary — come to find out he had it all on file with the funeral home. That was nice."

*FIP Respondent
Widow, age 64*





Other Resources

Books

Carlson, Lisa (1987). *Caring for Your Own Death*. Hinesburg, VT: Upper Access Publishers. ISBN: 0-942679-00-8.

Morgan, Earnest (1988). *Dealing Creatively with Death: A Manual of Death Education and Simple Burial*. 11th edition, Burnsville, NC: Celo Press. ISBN: 0-914064-26-6.

Norrgard, Lee E., and Jo DeMars (1992). *Final Choices: Making End-of-Life Decisions*. ABC: CLIO Santa Barbara, CA. ISBN: 0-87436-613-5.

Kouri, Mary K. (1991). *Keys to Dealing with the Loss of a Loved One*. Barrons Educational Series.

Pamphlets/Booklets

Federal Trade Commission (Aug. 1995). "Complying with the Funeral Rule: A Business Guide." For a free copy write: Federal Trade Commission, Public Reference Section, 6th & Pennsylvania Ave., NW, Washington, DC 20580

Free from the American Association of Retired Persons (AARP):

- *Product Report: Pre-Paying Your Funeral?* Stock number D13188
- *Product Report: Funeral Goods and Services* Stock number D13496 (Updated Dec. 1996)
- *Final Details: A Guide for Survivors When Death Occurs*, Stock Number D14168.

Send a postcard with title and stock number to:
AARP Fulfillment
601 E Str. NW
Washington, DC 20049

The Funeral and Memorial Society of America (FAMSA) is a national organization with 100 Societies around the country dedicated to providing consumer-oriented information about final arrangements. For a complete listing of their pamphlets and books write or call:

FAMSA
P.O. Box 10
Hinesburg, Vermont 05461
Phone: (802) 482-3437
www.funerals.org/famsa



To order additional copies of this booklet, please send a check payable to:

Center on Aging/FIP

Mail the check, and your address to:

**Center on Aging/FIP
University of Kansas Medical Center
5026 Wescoe
Kansas City, KS 66160-7117**

Booklets are \$4.00 each.

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The Wirthlin Group®
Decision making information
for intelligent choices

**American Attitudes and Values Affected by
Death and Deathcare Services**

Phase II (Quantitative)

**Prepared for
Allied Industry Joint Committee**

**Prepared by
The Wirthlin Group**

October 1990

**#5183-012
#599-090-002**



INTRODUCTION AND OVERVIEW

The Wirthlin Group is pleased to present results of Phase two of the study of American Attitudes and Values Affected by Death and Deathcare Services to the Allied Industry Joint Committee (AIJC). This study adds a second consumer perspective on the industry and its services. Phase One was qualitative in nature while Phase Two is quantitative. Phase One and Two together will provide critical input to developing an effective means to promote ritualization and memorialization among the American public.

BACKGROUND AND OBJECTIVES

Several trends do not bode well for that part of the DeathCare industry that promotes ritualization and memorialization. These include:

- a trend toward simplification in funeral and burial services;
- increases in the number of cremations, which are expected to grow even more;
- increases in shopping for funeral and burial services at non-traditional sources;
- the increasingly mobile nature of American society and lack of closeness to local providers of funeral, burial and memorial services;
- changes in the perception of who should pay for funeral, burial and memorial costs;
- a wide discrepancy between what people believe a proper funeral and memorial should cost and what it actually costs.

The Allied Industry Joint Committee is concerned about the disparaging effect these trends and misperceptions have regarding ritualization and memorialization among potential customers.

These trends have come about, and continue to grow, in part because of a lack of focus on the messages being communicated and a lack of marketing efforts on the part of the various segments of the DeathCare industry that desire to promote ritualization and memorialization.



The research for this phase of the study was guided by the following research objectives:

1. to determine which values chains (attributes, consequences and values) are most dominant in the consumers' minds,
2. to verify and quantify the finds from phase one to facilitate targeted communication and marketing efforts.
3. to discover differences among various segments of the market to aid in development of targeted communication,
4. to learn more about attitudes toward cremation and pre-planning (making pre-arrangements)

METHODOLOGY

In order to reach a representative and projectable sample, a national telephone study was conducted.

The sample consisted of 1000 interviews. Respondents were screened for age and only those 30 years of age and older were surveyed. This age was determined by The Wirthlin Group, in conjunction with the AJC, to be the appropriate target audience for this survey because adults 30 years or older are more likely to have experience making funeral arrangements. In addition, sample was provided in such a way as to insure appropriate state by state representation of the nation's population. This nationally representative sample, therefore, reflects a mixture of urban, suburban, and rural respondents, age groups, and ethnic groups. Forty percent of the sample was made up of males and sixty percent were females. The sample includes more females since they are known to be primary decision-makers regarding DeathCare choice.

To insure clear understanding of the questions, the interviews were pre-tested among a random telephone sample of respondents. The questionnaire was finalized based upon input from the pre-test. The interview is displayed in Appendix A. The interviewing was conducted in the Wirthlin Group's national telephone facility in Orem, Utah. Interviews began September 20, 1990 and ended September 26, 1990. Each interview lasted about 20 minutes.



EXECUTIVE SUMMARY

INDUSTRY IS VIEWED VERY POSITIVELY BY THE PUBLIC

The public thinks very highly of the people and businesses in the industry that provides services to honor or remember a deceased loved one. When asked for their general impressions, most gave laudatory responses, acknowledging that the industry has done a good job. Other commonly used adjectives include the following: helpful, friendly, concerned, caring and professional. Only one in ten made any negative remarks which centered around overcharging the customer or capitalizing on the family's emotions.

HIGH DEPENDENCY ON FUNERAL DIRECTOR FOR INFORMATION; OPPORTUNITY FOR OTHER SOURCES

The funeral director is the person most turn to for information on arrangements. This is true among people experienced in making arrangements as well as those who are inexperienced. This suggests an opportunity for other segments of the deathcare industry to play a greater role in disseminating information about their products and services. It is recommended that they implement this under an overall umbrella communications program.

THE PUBLIC IS RECEPTIVE TO MAKING PRE-ARRANGEMENTS

Three out of four Americans think that pre-arranging the details of one's own funeral is a good idea. However, only about one in four have done so. This discrepancy implies that there is a large segment of the population that are positively disposed toward pre-arrangements but have yet to take action. Within this group, four out of ten said that they would make pre-arrangements within the next five years. Therefore, a communications program directed at this should prove productive for the entire industry.



CREMATION DOES NOT MEAN NO CEREMONY

The industry is concerned that the increasing popularity of cremation will have a detrimental effect on business overall. However, this need not happen if the industry stays attuned to what people want. According to this research most want some kind of ceremony even when cremated. About half would still opt for the traditional ceremony and a third, a private ceremony. Respondents who chose a private ceremony describe it as a less elaborate affair, generally one with fewer people and limited to close friends and relatives. Even with cremation, about half would like to place a monument or marker at their gravesite.

OPPORTUNITIES EXIST FOR CEMETERY PLOTS

About half of all respondents own a cemetery plot. Those who do not most often cite "Never thought of purchasing one" as a reason. This suggests that there is a need to generate awareness among those who have not given the matter any thought.

ADVERTISING IS OK

As a communications medium, advertising is acceptable for most facets of the industry - especially for florists, funeral homes, monument suppliers and cemeteries.

THE WIRTHLIN GROUP

**1995 Study of American Attitudes Toward
Ritualization and Memorialization**



Funeral and Memorial Information Council

**Prepared By
The Wirthlin Group**

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September 1995

1383 Beverly Road, McLean Virginia 22101 Telephone 703 556 0001 Fax 703 593 3811

Offices: McLean, Chicago, Grand Rapids, Irvine, New York City, Orem, Salt Lake City, London



INTRODUCTION AND OVERVIEW

The Wirthlin Group is pleased to present the results of the first tracking study as compared to the benchmark study conducted in September 1990. These studies reflect consumer perspective on the industry and its services and changes in consumer attitudes and opinions about industry professionals and ritualization and memorialization methods.

Background and Objectives

Funeral and Memorialization Information Council (FAMIC) commissioned a study of consumer attitudes toward memorialization and ritualization in September 1990 to determine the values chains most dominant in consumers' minds when making arrangements for a funeral or burial, learn more about attitudes toward cremation and pre-planning, and study the trends toward simplification in funeral and burial services, in shopping for funeral and burial services at non-traditional sources and the increase in cremation.

This tracking study was guided by the following research objectives:

- to discover differences among various segments of the market to aid in development of targeted communication; and
- to learn more about attitudes toward pre-planning, cremation, use of flowers and monuments, and other aspects of memorialization.

Another goal of this research is to analyze the changes in attitudes from the September 1990 benchmark to this time.



Methodology

In order to reach a representative and projectable sample, a national telephone study was conducted.

The sample consisted of 1,000 interviews. Respondents were screened for age and only those 30 years of age and older were included in the survey. This age was determined by The Wirthlin Group, in conjunction with the Allied Industry Joint Committee (AIJC), in 1990, to be the appropriate target audience for this survey because adults 30 years or older are more likely to have experience making funeral arrangements. In addition, the sample was selected in such a way as to insure appropriate state by state representation of the nation's population. This nationally representative sample, therefore, reflects a mixture of urban, suburban, and rural respondents, age groups, ethnic groups and religious beliefs. Forty percent (40%) of the sample is made up of males and sixty percent (60%) is females. As with the benchmark study, the sample included more females since they are known to be primary decision-makers regarding remembrance and memorialization choices.

Interviews were conducted September 12, 1995 through September 19, 1995 by Wirthlin-trained interviewers at The Wirthlin Group's telephone facility in Orem, Utah. Interviews lasted on average 20 minutes.

For additional information about these studies or FAMIC, please contact Ms Pennie Sabel, Assistant Secretary, FAMIC, c/o The Results Group, 30 Eden Alley, Suite 301, Columbus, Ohio 43215, telephone: (614) 461-5852, fax: (614) 461-1497.



EXECUTIVE SUMMARY

The following sections summarize key findings in six important areas.

Industry Perceptions

People in this industry continue to be viewed very favorably, being described as helpful, friendly and professional. In particular, there has been a significant increase since the benchmark survey in the percentage of respondents who agree or somewhat agree that "people in the industry are professional and competent."

People are increasingly favorable to advertising from virtually all sectors of the industry. In particular, the appropriateness of advertising for casket makers, crematories, and cemeteries has increased significantly since 1990.

Funerals

A declining number of Americans attend funerals or have had experience making ritualization and memorialization arrangements. While the funeral director is still the greatest source of information for those making arrangements, a growing number of people rely on friends and relatives and personal experience rather than the Funeral Director.

The most important criteria in selecting a funeral home is that it has previously served the family.

"Open" versus "closed" casket is one of the first questions to be decided in making funeral arrangements. Most respondents (68%) who have experience in funeral arrangements chose to have an open casket. Of those who chose a closed casket (25%), most did so because they are philosophically opposed to viewings or feel it is not necessary to have an open casket. About one fifth of arrangers felt the body was not in a condition to be viewed and another tenth indicated that the deceased did not want to have an open casket.

Monuments

There has been an increase from the benchmark study in the percentage of respondents who go to a monument builder or the cemetery to purchase a monument or gravestone. Nearly half of those with



arrangement experience prefer to see someone who specializes in designing and creating monuments rather than the same person who helped make the other funeral arrangements. Better quality and better selection top the list of reasons why these people prefer a specialist – not price.

Cemeteries

Nearly three-quarters of respondents with arrangement experience feel cemeteries give them plenty of options to memorialize and mark the gravesite. Only one in ten believe there are too many restrictions.

Four of five people would not change anything about their experience with cemeteries (same as in 1990). Far fewer people cite poor appearance and a greater number cite increasing costs.

As in the benchmark, nearly one-half of the respondents currently own cemetery property. People who have already bought a plot have done so because they want to insure where the plot will be located (32%), because it was purchased previously by ancestors (28%), or to follow family tradition (22%). Most who do not own property say it is because they just never thought about it. For some it is just not as important, too costly, or they plan to be cremated.

Cremation

The percentage of people choosing cremation for both loved ones and themselves has increased from the benchmark study. Those choosing cremation also want to have some type of ceremony. Most prefer a traditional ceremony, followed by a private ceremony or memorial service. The latter services would differ from a traditional ceremony in that they would primarily be for only immediate family or friends.

Respondents are still split as to whether or not a permanent marker would accompany cremation, but if so, respondents in the tracking survey indicate that it would most likely be a monument (34%).

Pre-Arrangement

Most respondents still believe that pre-arrangement of the details of their funeral or burial is a good idea (80%), but the percentage of people who have actually made pre-arrangements is quite small (24%). In fact,



there has been a slight increase in the number of people who say that they are *not likely* to pre-arrange any aspect of their funeral or burial in the next 5 years.

**Executive Summary Of The
Funeral And Memorial Information Counsel
Study Of American Attitudes Toward Ritualization And
Memorialization: 1999 Update**

**Prepared by
WIRTHLIN WORLDWIDE**

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MARCH 10, 2000



EXECUTIVE SUMMARY

Wirthlin Worldwide is pleased to present the results of the third wave of the *American Attitudes Toward Ritualization and Memorialization Study*. This study is built on previous studies conducted in 1990 and 1995. Our purpose is to measure changes in consumer perspectives of the funeral industry and its services, changes in consumer attitudes and opinions about industry professionals, as well as preferred ritualization and memorialization practices.

This third wave of tracking consists of 1,002 interviews with adults 30 years of age and older. Forty percent (40%) of respondents are male and sixty percent (60%) are female. As with previous studies, the sample included more females since they are known to be primary decision-makers regarding remembrance and memorialization choices.

Interviews were conducted between September 1st and September 20th, 1999, by trained interviewers at our Wirthlin telephone facility in Orem, Utah. Interviews lasted an average of twenty-one minutes.



KEY FINDINGS

The following sections highlight key findings of the study in six major areas of interest: industry perceptions, funerals, monuments, cemeteries, cremation, and pre-arrangement.

Industry Perceptions

The funeral industry includes funeral homes, monument builders/dealers, cemeteries, crematoriums, and those providing pre-arrangement services. When asked about their impressions of the people and businesses involved in providing services to honor or remember loved ones, respondents continue to think very favorably of the ritualization and memorialization industry. This exceeds what is normally considered to be a healthy ratio of 3:1 for a typical industry. Two-thirds (69%; up from 68%, 1995; 65%, 1990) of the comments reflect positive feelings about the people and businesses involved. Overall, there is a 5:1 ratio of positive to negative comments.

When respondents were read a series of eight attributes that may or may not describe people and businesses in this profession, two of the eight attributes changed from 1995: *People in the industry are professional and competent* (86% agree; down from 91% in 1995; 85% in 1990) and *Makes me feel that I did the best I could have done* (91% agree; up from 85% in 1995; 83% in 1990). [Figure 1]

While respondents indicate overall approval of advertising for funeral industry products and services, 13% now say it is not appropriate to advertise (up from 8% in 1995 and 6% in 1990). [Figure 4] According to respondents, funeral homes remain the most accepted area for industry advertisement (79% approval), with monument suppliers (77%), cemeteries (72%), casket makers (62%), crematoriums (62%), and urn manufacturers (58%) following, respectively. Approval ratings for these individual product/service areas were, down slightly from the 1995 study.

Efforts to increase consumer exposure to products and services via independent stores and Internet websites are just beginning to impact the public. Fourteen percent (14%) of respondents have personally visited a store outside a funeral



home where caskets are sold, and 1% have ever looked for information on a funeral home or casket on the Internet. [Figure 5]

Funerals

Americans continue to have positive attitudes about attending funeral and memorial services, and about the professionals who help arrange these services. Nearly all (96%) of the 1,002 consumers surveyed have attended a funeral or memorial service. The number of respondents who go to the cemetery immediately after a funeral service (81%) has remained fairly steady since the 1995 tracking wave. [Figure 6] Over two-thirds (68%) of respondents say they have attended a funeral in the last two years. [Figure 7] This number shows a change from the 1995 and 1991 studies.

The most often named source of information for those choosing an arrangements provider is *friends and relatives* (33%). [Figure 8] *Previously served my family* (47%) is still the key factor when selecting a funeral home—consistent with 1995 research. Convenience (*close to my residence*), reputation and familiarity (*previously visited facilities*) are also factors influencing funeral home selection. [Figures 9 & 10]

Nearly all (95%) of those surveyed attend a funeral or memorial service as a way to show their feelings after death. After the funeral service, 80% prefer to go immediately to the cemetery. When respondents are asked what type of service they would prefer if making arrangements for themselves, 56% say they would choose a traditional ceremony. Seventeen percent (17%) say they would prefer a private service, and 11% would prefer a memorial service (a service without the body present). Nine percent (9%) indicated they wanted no ceremony. [1999 was the first year this question was asked.]

Of those who have had the responsibility of making arrangements for a traditional burial, nearly three quarters (74%) of those electing an earth burial prefer an open casket (up 6% from 1995). Of those who elect to have a closed casket, 29% now do so as a request of the deceased (up from 9% in 1995), and 30% say they do not feel an open casket is necessary (up from 24% in 1995). Among those who prefer a closed casket, the number *philosophically opposed*



to an open casket has dropped from 33% in 1995, to 9% in 1999. [Figure 11]

Overall, customer satisfaction with service received at the funeral home is high; 80% report not wanting to change anything about their personal experience.

[Figure 12] As with most customer goods or services, desired changes most often expressed deal with cost and personal attention. [Figure 13]

Monuments

The trend to contact a monument builder when purchasing a monument or gravestone continues. [Figure 14] More than half (52%) of those arranging a funeral prefer to deal with a monument design specialist because they feel the specialist: *offers more options/selection* (26%); *has more expertise* (26%); *offers the opportunity to see what you are getting* (25%). [Figure 15]

Cemeteries

The majority of those who have been involved with funeral arrangements in the past believe the cemeteries offer plenty of options in ways to memorialize and mark the gravesite of the person for whom arrangements are made (71%). Only 13% feel there are too many restrictions or limitations, a 2% increase over 1995. [Figure 16]

The number of respondents who own cemetery property has not changed significantly in the past four years—approximately 50% of those interviewed own cemetery property. However, the reasons why people are purchasing cemetery plots are changing. While in 1995 *to assure location* (32%) was the most frequently cited reason for cemetery property purchases, in 1999 *so others will not have to worry about it* (55%) edged out the location issue by three percent (52%). In the 1995 study, 28% of respondents indicated that the cemetery plot(s) were *inherited*, and 22% said property was purchased *following family tradition*. [Figure 17]



someone else make those final decisions (14%), but funeral planning remains one of those things people put off doing something about. [Figure 25] Forty percent (40%) of respondents indicate they plan to pre-arrange within the next five years. Only one-fourth (26%) of all respondents say they have actually made any arrangements. [Figures 26 and 27]

Asked for the first time in 1999, more than half (56%) say they would prefer to arrange a traditional service for themselves. Seventeen percent (17%) would prefer a private service and 11% would prefer a memorial service. Only 9% indicated they wanted no ceremony. [Figure 28]

**Preplanning for
Funeral and
Cemetery Needs**

**Quantitative
Research
WI #13500**

August, 1997

**Prepared For:
Monfre + Buchanan Marketing Communications**

**Prepared By:
Barbara Miller
Walker Information
Indianapolis, IN**

August, 1997

Executive Summary

- The primary purpose of this survey was to attempt to learn if the consumers surveyed; all of whom preplanned; found preplanning for cemetery space and services and/or funeral merchandise and services beneficial. By preplanning, did consumer find dealing with the distress of the death of a loved one less difficult?
- The results indicate preplanning is beneficial or perceived to be of benefit by the planners themselves. Cemetery preplanners were asked "How would you rate your overall experience with making the prearrangement?" Of all respondents asked, 75% rated the experience excellent or very good. The percentage increased to 77% among female respondents. Only 3% of all respondents rated the experience poor.
- Among funeral preplanners, the rating of excellent and very good climbed to 83%. Among females, this very positive rating increased to 86%. Those finding the experience poor was only 1%.
- The respondents were asked if he or she would be "likely to recommend that others make cemetery/funeral prearrangements?" Among cemetery preplanners 89% indicated they definitely or probably would recommend prearrangements to others. This result among funeral preplanners was 84%.
- Among cemetery and funeral preplanners, 81% and 80% respectively, felt the prearrangement "eases the loss of a loved one" and 67% and 68% agree "it saves money". Easing the loss of a loved one was the greatest source of satisfaction.
- When asked "How satisfied were you with the prearrangements that were made" 94% of cemetery and 97% of funeral preplanners were either satisfied or very satisfied with the plans. Of those surveyed in this sample, it is clear they perceive prearrangements as a very valuable service.
- The entire survey results and the text of the full questionnaire form the balance of this Report and Appendix.

Preplanning for Funeral and Cemetery Needs
Quantitative Research (Telephone Interviews)
August 1997

Introduction

- Background
- Objectives
- Method

Background and Objectives

Background

- Monfre + Buchanan Marketing Communications on behalf of the International Cemetery and Funeral Association would like to identify specific demographic and emotional characteristics of individuals who make their own funeral and cemetery arrangements.

Objectives

- The specific objectives of this research include:
 - Identifying specific demographic characteristics of individuals who make their own funeral and cemetery arrangements
 - Identifying emotional characteristics of individuals who make their own funeral and cemetery arrangements
 - Gauging levels of satisfaction with preplanning experiences that are both positive and negative

Method

- 400 telephone interviews were completed in Indianapolis, Indiana by Walker Information
- 200 telephone interviews were with consumers who preplanned cemetery needs and 200 telephone interviews with consumers who preplanned funeral needs. Both segments were defined by the funeral homes and mortuaries who provided the sample. These segments will be referred to as *Cemetery Preplanners* and *Funeral Preplanners* for the purpose of this report.
- Sponsorship of this project was mentioned at the beginning of the telephone interviews. The sample was provided by nine Flanner and Buchanan Mortuaries and eight cemeteries in the Floral Park and Washington Park Cemetery Associations in Indianapolis. These tend to be clustered on the north side of Indianapolis. Based on secondary research, the profile of the population of these counties looks like:

54% Females	50% Married
46% Males	29% Single
	21% Sep/Div/Wid
14% < HS	61% Children
24% HS Grad	39% No Children
31% Some College	
19% College Grad	
12% Post Grad	\$43,426 Mean
6% Under 25	
23% 25-34	
23% 35-44	
16% 45-54	
11% 55-64	
12% 65-74	
9% 75+	

- All of the data in this report is based off survey conducted with customers furnished by Monfre and Buchanan as opposed to random sampling of the Preplanners.
- Participants were not compensated for their time.

Preplanning for Funeral and Cemetery Needs
Quantitative Research (Telephone Interviews)
August 1997

Key Findings - Demographic/Sampling Characteristics Cemetery Preplanners

- Demographics are based on sample that was provided and it is difficult to determine from this research if this profile of Preplanners is consistent throughout the state.
- Demographics of all sampled *Cemetery Preplanners*
 - 69% Females
 - 61% High School graduate or less
 - 5% Have never been married
 - 68% Retired
 - 83% Protestant
 - 88% Have children
 - The mean age is 64.66 years of age
 - The mean income is \$23,000
- The mean age of selected Preplanners is significantly higher (65) than consumers in the same area (48).
- A higher percentage of sampled females are Preplanners (69%) than those females who live in the sampled area (54%).
- Significantly more Preplanners have high school education or less (61%) than the population in the sampled zip code areas (39%).
- The percentage of consumers in the selected area who have never been married (19%) is significantly higher than sampled Preplanners who have never been married (5%).

Key Findings - Demographic/Sampling Characteristics Cemetery Preplanners

• Education

- Education levels tended to follow the norm; as people got older, education and income level decreased.

• Marital Status

- Sixty four percent (64%) of married respondents preplanned at the cemetery compared to forty seven percent (47%) of single, divorced, or widowed respondents. This is a significant difference.
- Nearly seven out of ten married Preplanners (68%) paid in installments compared to five out of ten (55%) single, divorced, or widowed. This is significantly higher.
- Forty four percent (44%) of married Preplanners are men compared to only twenty one percent (21%) of single, divorced, or widowed Preplanners being men.
- One out of four married Preplanners (25%) are under age 50. This is significantly higher than single, divorced, or widowed Preplanners (9%).
- Almost half (49%) of single, divorced, or widowed Preplanners are over age 71 compared to thirteen percent (13%) of married Preplanners. This is a significantly higher percentage.
- Over three out of four single, divorced, or widowed Preplanners (76%) are retired. This is significantly higher than married Preplanners (57%).
- Seventy four percent (74%) of single, divorced, or widowed Preplanners are not offended by marketing techniques. This is significantly higher than the married group (56%).
- Over half of single, divorced, or widowed Preplanners (55%) have had previous preplanning experience. In the married group only thirty percent (30%) had previous experience with the process. The difference between these percentages is significant.

Preplanning for Funeral and Cemetery Needs
 Quantitative Research (Telephone Interviews)
 August 1997

Key Findings - Demographic/Sampling Characteristics Cemetery Preplanners

· Employment Status

- Three out of four (77%) retired Preplanners paid in full compared to only sixty two percent (62%) who made installment payments. This is a significant difference.
- Twenty percent (20%) of full time employed Preplanners had no previous preplanning experience. This is significantly higher than those full time employed Preplanners who had previous experience (11%).

· Religion

- In all attributes the mean score for *all other religions* was lower than Protestant ratings. (5 is excellent and 1 is poor)

	Other	Protestant
· Overall experience	3.79	4.07
· Person	3.83	4.05
· Professional manner	3.96	4.19
· Knowledge	3.89	4.09
· Financial concern	3.71	3.98
· Value	4.38	4.54
· Recommend to others	4.24	4.48
· Previous satisfaction	4.36	4.69

Key Findings - Behavioral Characteristics Cemetery Preplanners

• Pre-arrangement Setting

- Sixty nine percent (69%) of Cemetery Preplanning took place at the cemetery or mortuary (*On Location*) as compared to thirty one percent (31%) in the *home*. This is a significant difference.
- Almost half (48%) of *On Location* Preplanners paid in full. This is significantly higher than those who preplan at *home* (15%).
- *On Location* Preplanners rated their overall experience as excellent (38%) significantly more often than *home* Preplanners (25%).
- *On Location* Preplanners rated the professional manner of the service person as excellent (46%) significantly more often than *home* Preplanners (32%).
- Almost eighty percent (79%) of *home* Preplanners are female. This is significantly higher than *On Location* Preplanners (64%).
- Half (51%) of those that respondents who preplanned in the *home* "Simply felt it was time" compared to only thirty five percent (35%) who preplanned *On Location*. This is significantly higher.

• Previous Experience With Preplanning

- Almost seven out of ten (67%) Preplanners with previous experience said they definitely would recommend that others make pre-arrangements compared to only fifty five percent (55%) of those Preplanners with no previous experience.
- Eighteen percent (18%) of Preplanners with previous experience said that "It makes sure final wishes are carried out" is an important attitude when preplanning. This is significantly higher than those with no previous experience (7%).
- Twenty one percent (21%) of those Preplanners with no previous experience said that "Costs of preplanning" was the main reason they postponed the process compared to those with previous experience (10%).
- Six out of ten (61%) of Preplanners with previous experience said they did not delay or postpone the process compared to only forty five (45%) of those with no previous experience. This is significantly higher.
- Nearly sixty percent (57%) of Preplanners with no previous experience are married. This is significantly higher than those Preplanners with previous experience (31%).

Key Findings - Behavioral Characteristics Cemetery Preplanners

• Payment for Preplanning Services

- Nearly nine out of ten (86%) Preplanners who paid in full preplanned *On Location*. This is significantly higher than fifty seven percent (57%) of respondents who paid in installments who preplanned *On Location*.
- Fourteen (14%) of those Preplanners who made installment payments said "*It saves money*" was the most important reason. This is significantly higher than those who paid in full (3%).
- Half (51%) of Preplanners who made installment payments are married. This is significantly higher than those married who paid in full (36%).

• Marketing Techniques

- Three out of four (76%) of those not offended by marketing techniques purchased a grave compared to fifty two percent (52%) of those offended. This is a significant difference.
- Sixty six percent (66%) of those Preplanners not offended by marketing techniques definitely will recommend preplanning. This is significantly higher than fifty two percent (52%) of those offended.
- Three out of ten (30%) of those Preplanners not offended have less than a high school education compared to only eleven (11%) of those offended.

Key Findings - Emotional Characteristics Cemetery Preplanners

- **Emotional Characteristics Among Cemetery Preplanners**
 - Half (51%) of all Cemetery Preplanners made the decision because they "Simply felt it was time."
 - All five attribute questions were rated as excellent or very good at least seventy percent (70%) of the time. This indicates that the preplanning process is generally positive.
 - Nearly 8 out of 10 (79%) women rated their overall experience as excellent or very good. This is significantly higher than men Preplanners (67%).
 - 88% of Cemetery Preplanners less than 50 years of age rate their overall experience as excellent or very good. This is significantly higher than those age 51-70 (75%) and those age 71+ (70%).
 - Nearly half of respondents (48%) with income over \$20,000 rated their overall experience as excellent. In those with income less than \$20,000 three out of ten (28%) rated this experience as excellent. This is a significant difference.
 - "Professional manner of the service person" has the highest satisfaction for Cemetery Preplanners (4.16 where 5 is excellent).
 - "Concern for my financial situation" has the lowest mean for Cemetery Preplanners (3.95 where 5 is excellent).
 - Value is rated within the top two boxes among All (100%) Cemetery Preplanning males (4.51 mean where 5 is very valuable).
 - Ninety five percent (95%) of All Cemetery Preplanning males would recommend preplanning.
- **Attitudes**
 - 78% of Cemetery Preplanners under age 50 feel these arrangements "Ease the loss for loved ones" and also "Make sure final wishes are carried out."
 - 68% of Cemetery Preplanners over age 51 feel these arrangements "Help put the estate in order."
 - Half (52%) of all Cemetery Preplanners feel they did not delay or postpone the process.

Conclusions

Cemetery Preplanners

Conclusions

- It appears that older Preplanners are more concerned with the benefit to themselves versus younger Preplanners who are more concerned with family survivors. This information could be useful in future marketing strategies (i.e. showing brochures with family members might have more appeal to those consumers under age 50).
- Because "*Concern for my Financial situation*" appears to have the lowest mean at 3.95 there could be an opportunity for additional sales training regarding a gender approach to lower income customers.
- Preplanners who paid in installments said that "*It saves them money*" is the most important reason to preplan. This may be an opportunity for leverage to lower income customers.
- In all attributes ratings tended to decline as respondents got older. This data could indicate the need for a softer approach to a more elderly customer base.
- In all attributes the mean for all other religions was the lowest among all groups. Protestant Preplanners gave a higher rating in all attributes. This could indicate the need for a different marketing technique or message focused on a variety of religions.
- Even though Preplanners stated they are offended by marketing techniques over half of those definitely will still recommend. This indicates that the process is very important for consumers.

Key Findings - Demographic/Sampling Characteristics Funeral Preplanners

- Demographics are based on sample that was provided and it is difficult to determine from this research if this profile of Preplanners is consistent throughout the state.
- Demographics of all *Funeral Preplanners*
 - 73% Females
 - 60% High School Graduate or less
 - 6% Have never been married
 - 74% Retired
 - 79% Protestant
 - 79% Have children
 - The mean age is 69.14 years old
 - The mean income is \$24,500
- The mean age (69) of selected preplanners is significantly higher than consumers in the same area (48).
- A higher percentage of sampled females are Preplanners (73%) than those females who live in the sampled area (54%).
- Significantly more Preplanners have high school degree or less (60%) than the population in the sampled zip code areas (39%).
- The percentage of consumers in the selected area who have never been married (29%) is significantly higher than sampled Preplanners who have never been married (6%).

Key Findings - Demographic/Sampling Characteristics Funeral Preplanners

• Marital Status

- Eighteen percent (18%) of married Preplanners are college graduates. This is significantly higher than those Preplanners who are single, divorced, or widowed (6%).
- Over half (52%) of single, divorced, or widowed preplanners have income of less than \$20,000 as compared to twelve percent (12%) of married respondents. This is a significant difference.
- Seventeen percent (17%) of single, divorced, or widowed preplanners are over 81 years of age while only nine percent (9%) of married respondents are over 81 years of age.

• Religion

- Twelve percent (12%) of Protestant Preplanners "*Learned from making arrangements for someone else who had not preplanned.*" This is significantly higher than all other religions (3%).
- Almost forty percent (36%) of Protestant Preplanners had previous preplanning experience compared to only sixteen percent (16%) of all other religions. This is a significant difference.
- Three out of ten (30%) of all other religions are age 71-75 years. This is significantly higher than Protestants (13%).
- Eighty two percent (82%) of females are Protestant as compared to only seventy one percent (71%) of males being Protestant.

Key Findings - Behavioral Characteristics Funeral Preplanners

Pre-arrangement Setting

- Sixty four percent (64%) of *Funeral Preplanning* took place in the home as compared to thirty five percent (35%) that took place at the cemetery or mortuary (*On Location*). This is a significant difference.
- Three out of four (74%) of *On Location* preplanners paid in full. This is significantly higher than those who preplan at home (51%).
- Over eighty percent (81%) of *home* preplanners are female. This is significantly higher than *On Location* preplanners who are female (69%).
- Two thirds (67%) of those that respondents who preplanned in the *home* "Simply felt it was time" compared to only fifty four percent (54%) who preplanned *On Location*. This is significantly higher.
- Seven out of ten (69%) of *On Location* preplanners think preplanning is *very valuable* compared to only fifty six percent (56%) of at home preplanners who said *very valuable*.
- Seventeen percent (17%) of at home preplanners are divorced or separated. This is significantly higher than the *On Location* Preplanners (8%).

Previous Experience With Preplanning

- Over nine out of ten (95%) preplanners with previous experience said they definitely will recommend that others make pre-arrangements compared to only seventy nine percent (79%) of those preplanners with no previous experience.
- Three out of four preplanners with previous experience (75%) saw the preplanning decision as very valuable compared to only fifty nine percent (59%) of preplanners with no previous experience.
- Twenty four percent (24%) of preplanners with previous experience said "It eases the loss for loved ones" as most important. This is significantly higher than fourteen percent of those without previous experience (14%).
- Ten percent (10%) of preplanners with previous experience said "It saves money" as most important. This is significantly higher than three percent (3%) of those without previous experience.
- Half (52%) of preplanners with previous experience are widowed. This is significantly higher than those preplanners with no previous experience (31%).

Key Findings - Behavioral Characteristics Funeral Preplanners

- **Previous Experience With Preplanning (continued)**
 - Nine out of ten (90%) Preplanners with previous experience are Protestant compared to only seven out of ten (74%) of those Preplanners with no previous experience.
 - Eighty one percent (81%) of Preplanners with previous experience are female compared to only sixty nine percent (69%) without previous experience. This is a significant difference.
- **Payment for Preplanning Services**
 - Nearly seven out of ten (69%) of Preplanners who made installment payments are ages 51-70. This is significantly higher than Preplanners who paid in full (33%).
 - Half of Preplanners who made installment payments (50%) preplanned at home compared to only twenty six percent who paid in full (26%).
 - Over half of Preplanners who made installment payments (52%) rated "Their service person overall" as excellent. This is significantly higher than those who paid in full (36%).
 - Almost all (98%) of preplanners who made installment payments rated "the professional manner of their service person" as excellent or very good compared to eight nine percent of those who paid in full (89%).
 - Ninety three percent (93%) of Preplanners who made installment payments rated "Concern for my financial situation" as excellent or very good. This is significantly higher than those that paid in full (78%).
 - Eighteen percent (18%) of those who made installment payments said they delayed the decision because of "Avoidance of the topic of death." This is significantly higher than eight percent in the paid in full group (8%).
 - Half of Preplanners who made installment payments (50%) said "It eases the loss for loved ones" was important compared to only thirty seven percent (37%) in preplanners who paid in full.
 - Eight out of ten Preplanners who made installment payments (80%) would definitely recommend preplanning. This is significantly higher than the Preplanners who paid in full (61%).
 - Three out of four (75%) Preplanners who made installment payments have a high school degree or less compared to only half (53%) of those who paid in full.
 - Eighty four percent (84%) of Preplanners who made installment payments are female. This is significantly higher than the group that paid in full (67%).

Key Findings - Emotional Characteristics Funeral Preplanners

Marketing Techniques

- Over half (57%) of all *Funeral Preplanners* are not offended by any marketing techniques. This is significantly higher than those offended (43%).
 - Almost half of those Preplanners not offended by marketing techniques rated their *service person overall* as excellent. This is significantly higher than those Preplanners who are offended (33%).
 - Seven out of ten (69%) of those Preplanners not offended by any marketing techniques have a high school degree or less. This is significantly higher than those offended (47%).
 - Fifteen percent (15%) of those not offended by marketing techniques have income less than \$10,000 compared to those that are offended (5%).
 - Eight out of ten (80%) of those not offended by marketing techniques are retired. This is significantly higher than those offended (65%).
- ### Emotional Characteristics Among Funeral Preplanners
- Over half of All *Funeral Preplanners* (57%) made the decision to preplan because they "Simply felt it was time."
 - All five attribute questions were rated as excellent or very good at least eighty percent (80%) of the time. This indicates that the funeral preplanning process is very positive.
 - "Professional manner of the service person" has the highest satisfaction for Funeral Preplanners (4.43 where 5 is excellent).
 - "Overall experience" has the lowest mean score for Funeral Preplanners (4.15 where 5 is excellent).
 - Value is rated within the top two boxes among almost All (98%) of Funeral Preplanners (4.61 where 5 is very valuable).
 - All (100%) Funeral Preplanners who are under age 50 or over age 71 rated their decision to preplan as very valuable or valuable.

Key Findings - Emotional Characteristics Funeral Preplanners

Attitudes

- Sixty two percent (62%) of All Funeral Preplanners feel they did not delay or postpone the process of preplanning.
- Forty one percent (41%) of All Funeral Preplanners feel the most important reason for preplanning is "It eases the loss for loved ones."
- Eighty six percent of females rated their "overall experience" as excellent or very good compared to only sixty nine percent of men (69%).
- The mean score for "professional manner of the service person" was significantly higher for females (4.51 where 5 is excellent) than the male group (4.22 where 5 is excellent).
- The mean score for "concern for my financial situation" was significantly higher for females (4.27 where 5 is excellent) than the male group (3.98 where 5 is excellent).
- Seven out of ten (71%) females considered their decision to preplan as very valuable. This is significantly higher than the male group (45%).
- Fourteen percent of females (14%) delayed the decision to preplan because of "avoidance of the topic of death" compared to only two percent (2%) of males.
- Thirteen percent of males (13%) delayed the decision to preplan because of "lack of knowledge that preplanning exists" compared to only six percent (6%) of females.
- Seven out of ten (71%) females definitely will reconmend preplanning. This is significantly higher than the male group (56%).
- The less education a person has indicates they are less offended by marketing techniques.
- People feel preplanning is valuable. This indicates that once they complete the process they garner a value in preplanning.
- Because people are preplanning for funeral and cemetery needs at relatively the same age there is an opportunity for a single provider service. Lower pricing for doing Everything at one time might be one way to encourage participation.

Conclusions

Funeral Preplanners

• Conclusions

- A high percentage of funeral preplanning is taking place in the home. This indicates consumers don't feel as comfortable *On Location*. This information was reiterated by some female Preplanners during the group discussions. Additional in-depth research of why females aren't comfortable might be helpful.
- It is easier to get *On Location* Preplanners to pay in full. This indicates a potential need for increased financial assertiveness when marketing to at home Preplanners.
- Because more Preplanners with previous experience think "*It saves money*", this indicates the need for additional financial information to the general public.
- Installment payment Preplanners tended to rate attributes higher indicating the need for additional sales training regarding initial visits to the cemetery or mortuary.

Conclusions

Funeral and Cemetery Preplanners

• Conclusions

- Because the sample was chosen from selected associations it would be beneficial to repeat the survey using random digit dial sample.
- The demographics of the two different groups (Cemetery and Funeral Preplanners) are very similar. The median age and income are somewhat higher in the funeral group than in the cemetery group.
- Because people are preplanning for funeral and cemetery needs at relatively the same age there is an opportunity for a single provider service. Lower pricing for doing Everything at one time might be one way to encourage participation.
- The attribute rating scores are high, indicating that once people begin the preplanning process there are few negative events. This information could be important to educate potential consumers.
- Although Preplanners feel they did not delay; the fact that the median age is 65 to 69 years indicates that there could be an opportunity to educate the population as to an appropriate time to preplan for these needs. This may allow for additional revenue for the funeral and cemetery industries.
- People who preplanned at home did so because they "*Simply felt it was time*" indicating a need to increase awareness of preplanning. Home marketing techniques could increase revenue potential.
- Very few Preplanners are offended by direct mail marketing techniques. Additional research regarding the success of this marketing effort would be helpful in securing additional sales.

Key Conclusions

Funeral and Cemetery Preplanners

- The primary purpose of this survey was to attempt to learn if the consumers surveyed; all of whom preplanned; found preplanning for cemetery space and services and/or funeral merchandise and services beneficial. By preplanning, did the consumer find dealing with the distress of the death of a loved one less difficult?
- The results indicate preplanning is beneficial or perceived to be of benefit by the planners themselves. Cemetery preplanners were asked "How would you rate your overall experience with making the prearrangement?" Of all respondents asked, 75% rated the experience excellent or very good. The percentage increased to 79% among female respondents. Only 3% of all respondents rated the experience poor.
- Among funeral preplanners, the rating of excellent and very good climbed to 81%. Among females, this very positive rating increased to 86%. Those finding the experience poor was only 1%.
- The respondents were asked if he or she would be "likely to recommend that others make cemetery/funeral prearrangements?" Among cemetery preplanners, 89% indicated they definitely or probably would recommend prearrangements to others. This result among funeral preplanners was 84%.
- Among cemetery and funeral preplanners, 81% and 80% respectively, felt the prearrangement "eases the loss of a loved one" and 67% and 68% agree "it saves money". Easing the loss of a loved one was the greatest source of satisfaction.
- When asked "How satisfied were you with the prearrangements that were made?", 94% of cemetery and 97% of funeral preplanners were either satisfied or very satisfied with the plans. Of those surveyed in this sample, it is clear they perceive prearrangements as a very valuable service.
- The entire survey results and the text of the full questionnaire form the balance of this Report and Appendix.

The CHAIRMAN. Thank you all very much for your testimony. My first question is to all of you, and it is to make sure that I don't go over an opportunity or miss giving plenty of opportunity for any reaction from any witnesses yesterday. You all heard that testimony, or at least references to it, and so my question to any of you is: Do any of you have a reaction to that testimony that you would like to address before we move to more specific questions?

Mr. JACOBSON. Senator Grassley, I would like to address that.

The CHAIRMAN. Go ahead.

Mr. JACOBSON. When I finished eating my meal last night, I went up to my hotel room and called home and talked to my oldest daughter, who at that very moment was sitting there watching C-SPAN hoping to see Dad on the TV. Instead, she saw Father Wisleski stating, without being called on it, that almost every funeral director in the country is a crook, and nobody said anything about it. My daughter said to me, "We met Senator Grassley. He knows you are not like that. Why doesn't he say anything?" And that is my question to you. When you know there is a difference, why do you let people—

The CHAIRMAN. Do you remember yesterday both Senator Breaux and I were chastised by somebody on the committee who said that when we make statements that there are just a few bad apples in the profession, we don't know what we are talking about? We thought we had adequately addressed the issue of the honesty and ethical uprightness of most people in the profession with that statement, both what we have said in our opening statements as well as what I have said in questions. So we did not respond at that point because we thought that we had adequately addressed that, and he obviously disagreed with us.

Mr. JACOBSON. Senator, I would appreciate you offering that explanation to the people all over this country who weren't privy to your opening comments who only saw those people talk.

The CHAIRMAN. Yes, the way C-SPAN works, we have about 12 million listeners over the course of a year. The average person watches C-SPAN about 10 minutes at a time. So just based upon the audience of C-SPAN, it is never possible to get a complete picture out there because most people don't watch it for that long of a period of time.

Also, in Iowa, when we had our hearings there, I think I made adequately clear my feelings on that, and funeral directors in Iowa heard me say what I have repeated here just now.

Anybody else? Go ahead, Mr. Elvig.

Mr. ELVIG. Well, Senator, I wanted to compliment both Senators on how you handled what you heard yesterday. The tears from the first speaker, the other lady who had the issue in California where she literally had to take over a cemetery, I would say you belong in the funeral business because I watched how you related, and that was good. They weren't belittled. They weren't put down. They were listened to. And I think that is a cue for everybody in this profession. It is a cue for people who handle complaints, and that is to listen carefully, because behind the complaint is some very deep hurt. You showed that respect and I appreciate that.

The CHAIRMAN. OK. I will move on to our specific questions then. I will start with Ms. Harrington.

I would like to have you clarify something you said in your statement. If I understand it correctly, the FTC sweeps, or test shopping to ensure compliance with the Funeral Rule, are designed only to boost compliance with the core requirements of giving consumers an itemized price list. Does this mean that FTC does not enforce or has never determined whether funeral homes are in compliance with the other provisions of the Funeral Rule, such as misrepresentations about embalming?

Ms. HARRINGTON. No. The test shopping program, as you just stated, is designed and intended to check for compliance with core requirements that are very easy to test on undercover test shopping. But the FTC continues to investigate consumer complaints, complaints from competitors, and information that comes from other sources suggesting that homes and other providers covered by the rule may not be complying with those or other provisions in the rule.

The CHAIRMAN. Also, Ms. Harrington, as you know, the GAO report that I requested and issued last fall found deficiencies in the FTC's oversight of the Funeral Rule. Specifically, the report stated that, "FTC does not have a systematic or structured process for measuring funeral homes' compliance." Then it went on to state, "FTC did not always take enforcement action against funeral homes that potentially violated the rule and did not always document the reason."

I would like to have your response to that specific statement by the General Accounting Office.

Ms. HARRINGTON. Well, those are both true statements. With respect to the first statement, the FTC is a law enforcement agency. We are not an agency with responsibility for traveling around the country developing statistically significant sampling techniques to determine compliance rates by this industry or any industry. That is not our business. That is more like something done by the Census Bureau or the Commerce Department. So the first statement is true.

Second, the criticisms from the GAO report about recordkeeping and other methodologies that we use in our test shopping program have been taken very much to heart by us, and we have made some changes in the guidance that we provide to all of the people in the FTC who are involved in this work, and we very much appreciated the opportunity to work with the GAO staff in implementing those changes.

The CHAIRMAN. Mr. Ayers, you have presented quite a case supporting combining regulation of all death-related industries under one State office. How many other States have a single regulatory entity for these industries? And is there any sort of trend in that direction?

Mr. AYERS. I really can't speak to what other States are doing. I tend to look very much at what we are doing there at home. I can't really speak on a broad basis on what other States are doing.

The CHAIRMAN. Do you have national association meetings of your State regulatory agencies that you get any sort of a trend from? Or aren't you able to go to those?

Mr. AYERS. The North American Cemetery Regulators Association, of which I am a member, which was referred to earlier, was

looking toward combining or including funeral regulators also in their membership. That has not taken place at this time, and as I understand it, may not be taking place in the future. I don't know. So there is some consideration given to that, but I don't see a clear trend toward that at this point.

The CHAIRMAN. Ms. Harrington, getting back to the GAO report, it also found that, "The FTC's efforts to measure compliance have been limited to narrowly scoped test shopping sweeps in selected areas." The committee's analysis of the FTC's test shopping shows that only 191 of 22,152 funeral homes were visited for compliance by FTC during the 5-year period 1994 through 1998. Obviously, that is about 0.8 of 1 percent visited each year.

How does the FTC conclude that it is overseeing the Funeral Rule with what is a relatively small amount of funeral homes visited?

Ms. HARRINGTON. Well, actually, as you mentioned, there are approximately 23,000 funeral homes throughout the United States, and we have visited well over 1,000 of those. These are businesses, as I mentioned in my testimony, that operate in very localized markets. The FTC has fewer than 1,000 employees. We have a very large mandate to enforce antitrust and consumer protection laws. And I think that the fact that the FTC-sponsored test shoppers have visited the percentage of homes that we have visited is quite remarkable.

So I think, you know, this is a program that we are continuing to coordinate with State and local consumer agencies and other volunteers. We will continue, as I mentioned, with test shopping this year and into the foreseeable future. And as I also mentioned, this is a program that complements our more traditional and formal law enforcement and investigative work in this area, as well as our regulatory and educational work.

The CHAIRMAN. The GAO report raises concerns about the FTC's record of funeral homes that the FTC test-shopped in 1997 and 1998. Apparently, enforcement action is not taken in every case, and little, if any, support for FTC's determination to enforce or not enforce is reflected in the record. Moreover, the GAO's review showed that the reviews are narrowly focused on general price lists and hardly focused at all on other elements of the Funeral Rule.

Do you have any response to that, either agreement or disagreement with the General Accounting Office?

Ms. HARRINGTON. Sure. First, the General Accounting Office correctly notes that FTC staff exercises its prosecutorial discretion in reviewing information generated by test shopping and also, a matter not addressed in the GAO report, when we review complaints that we receive.

The FTC staff declines to take additional investigative or enforcement action in a large number of complaints that we receive from consumers on a whole host of issues. The existence of a complaint, for example, that is received by the FTC does not translate into the existence of a law violation necessarily. There is need for additional investigation, and not all situations warrant the expenditure of additional resources to determine whether or not there may be a law violation.

We have experienced and knowledgeable staff looking at the results from these test shops and looking at our complaints, and we have confidence that their judgment about what needs to happen next is good judgment.

So that answers, I think, the first question about the criticism or the suggestion of criticism that every time there is an indication that there may be a violation the FTC does not necessarily take further action.

The CHAIRMAN. I guess in answer to the last three questions, I should not make a judgment at this point without studying just what you have told me and other evidence from the FTC. But I think it would be fair for me to repeat from the General Accounting Office report itself their assumption that there is not a large enough sample taken or enough homes visited to say that there is good enforcement of the Funeral Rule by the FTC.

Ms. HARRINGTON. Well, I don't think that that is the right conclusion to draw, Senator—

The CHAIRMAN. Well, not my conclusions. I am not going to draw a conclusion at this point. I just thought at this point I should repeat what I thought was a fair summary of what the FTC concluded—I mean, what the GAO concluded about the FTC enforcement.

Ms. HARRINGTON. I don't think that that is what the GAO concluded either.

The CHAIRMAN. OK. Then I want to hear your response to that.

Ms. HARRINGTON. I believe that the GAO conclusion was that the FTC was not in a position to provide a statistically significant and accurate measure of the precise level of compliance with its Funeral Rule among covered entities. And the GAO's reasoning is that the Commission is not in a position to do that because when it does its undercover test shopping, it doesn't select homes using a statistical model. And that is absolutely true.

When we do our undercover test shopping, we go into markets, first of all, where people live, that is, we seek to allocate resources to areas where we are likely to achieve the greatest measure of protection, and so that is not statistically driven in a sampling sense.

Second, there is an issue of resource availability. As I mentioned, the FTC staff recruits colleagues from State attorney general's offices, local consumer affairs and protection agencies, and has frequently made use of the good services of our friends at AARP to recruit their volunteers to help us do this test shopping. So we organize where we can marshal the resources to do this. But operating from Washington and our regional offices, the FTC cannot simply deploy resources to every funeral home in the United States or to every market in the United States.

So I think that the GAO is wrong in its conclusion that because we haven't proceeded in this matter like the Census Bureau might but, rather, we have proceeded like a law enforcement agency does, we can't say with precision statistically what the overall compliance rate with these provisions of the rule is throughout the United States. I think that was what the GAO concluded.

The CHAIRMAN. Senator Breaux.

Senator BREAUX. Thank you very much, Mr. Chairman, and thank all of the panel.

Let me start, Mr. Jacobson, with you, with a comment, and I think it is very unfortunate the choice of words that you used to attack Chairman Grassley's makeup of the committee hearing. I do not think that it served you well in your representative position, nor did it serve well the industry that you purport to represent. If you look around Washington, you would observe that most hearings, in fact, are conducted in this fashion. When we are looking at a particular area to take a look at to see if things are being run the way they should be according to the law, we generally have a group of people that come in and lay out their complaints and then follow that up with the industry or the affected parties to come in and answer those complaints and present it in a balanced hearing.

The fact that you are from the State of Iowa and the chairman is from Iowa is no coincidence. The fact that he went to his own State to find someone to speak for the industry is, I think, a credit to him.

In addition, you don't speak just for yourself. You represent 14,000, by your own testimony, funeral directors in this country. Your organization has been in existence since 1882. Now, we could have the 14,000 funeral directors come and testify, but, no, the chairman thought it would be appropriate to have you speak for the 14,000. You are not speaking just for yourself. I mean, you had four or five people saying they had some complaints. I think you are either uncomfortable with your own position or uncomfortable with the industry that you represent that you are not big enough to be able to come in and respond to their complaints without complaining yourself.

Do you have anything to say about that?

Mr. JACOBSON. If I have offended Senator Grassley or Senator Breaux—

Senator BREAUX. You offended me.

Mr. JACOBSON [continuing]. I apologize.

Senator BREAUX. That is not—you represent 14,000 funeral directors.

Mr. JACOBSON. I feel very strongly about the funeral service that I represent.

Senator BREAUX. I appreciate that, and that is why you are here.

Mr. JACOBSON. And I am very conscious of the 14,000 people that I represent. Those 14,000 people that work and make their livings in this occupation are having their name smeared across the headlines.

Senator BREAUX. I beg to differ with that. We have had four or five people talk about some problems they have had with your industry. Today you are here to respond to those complaints. And today you are on television. Today you will be reported what you have to say. That is why you are here. If the chairman was being unfair in setting up the hearing, you wouldn't be here. I mean, no one from your industry would be here. You could have a hearing like that. Would it be fair? Of course not. But the fact that we have had people with complaints, four or five people from around the country, and we indicated how few complaints have actually been filed with the FTC and your industry. And this is an editorial com-

ment from me because, I mean, you represent 14,000 people and that is why you are here. And I don't want to argue about that. I will ask you questions along the substance, but it is, I think, terribly unfair for you to take the position that somehow the chairman has had an unbalanced hearing. This is the type of hearings we have on a regular basis. You and this gentleman who represents 5,000 cemeteries, owners and operators in 28 countries, including the United States, you are speaking for them, and you are speaking for 14,000 funeral directors. And we had four or five people, individuals who came to Washington to talk about a problem. I mean, you have to be big enough to say, "Yes, there are problems, yes, we are addressing them, yes, it is a minority of the people in the industry." That is what it is all about. This is serious business. And you can't say, "Well, the only people we are going to hear from are the owners."

Ms. Harrington, let's talk about your area of jurisdiction. How intense is the funeral regulation area as far as the Funeral Rule is concerned compared with other areas that you deal with? For instance, the FTC also enforces the used car rules. As a comparison, how many people do you have dealing with the used car industry compared to the funeral home industry?

Ms. HARRINGTON. Senator, I don't have those numbers, but I would say it would be pretty comparable.

Senator BREAUX. About the same amount?

Ms. HARRINGTON. That is right. And both of those areas would be less resource-intensive than, for example, telemarketing fraud, fraud on the Internet, fraud in—

Senator BREAUX. I am glad to hear that. In other words, you are saying that this is not something that is way on the back burner as far as enforcing of the Funeral Rule.

Ms. HARRINGTON. No, it is not way on the back burner, but it is also not the subject about which we receive the largest number of consumer complaints or complaints that describe the largest amount of economic injury.

We are in significant part responsive to what we hear from the public about and consumers about. Not entirely. We also try to be proactive. But, for example, my group, which is responsible for enforcement of the Funeral Rule, also does telemarketing fraud, Internet fraud. This week we have a trial underway—it is a 4-week trial in Las Vegas—against an alleged pyramid scheme that has bilked people out of what we estimate is \$300 million.

Senator BREAUX. In what area? Is this telemarketing?

Ms. HARRINGTON. No. It is purportedly a multi-level marketing company that the Commission alleges is, in fact, a pyramid scheme. That trial and our work in that area are very resource-intensive, but the complaints that we receive at our Consumer Response Center over our toll-free number from our online complaint form, in the mail, by fax, suggest that there is a great deal of consumer harm caused by those kinds of problems—

Senator BREAUX. OK. Let me ask you about what you all did in the sweeps that resulted in a lot of consent decrees. Tell me about the consent decrees. What do they look like? I mean, you don't have the authority, I take it, to revoke a license?

Ms. HARRINGTON. No, we don't. We are not—

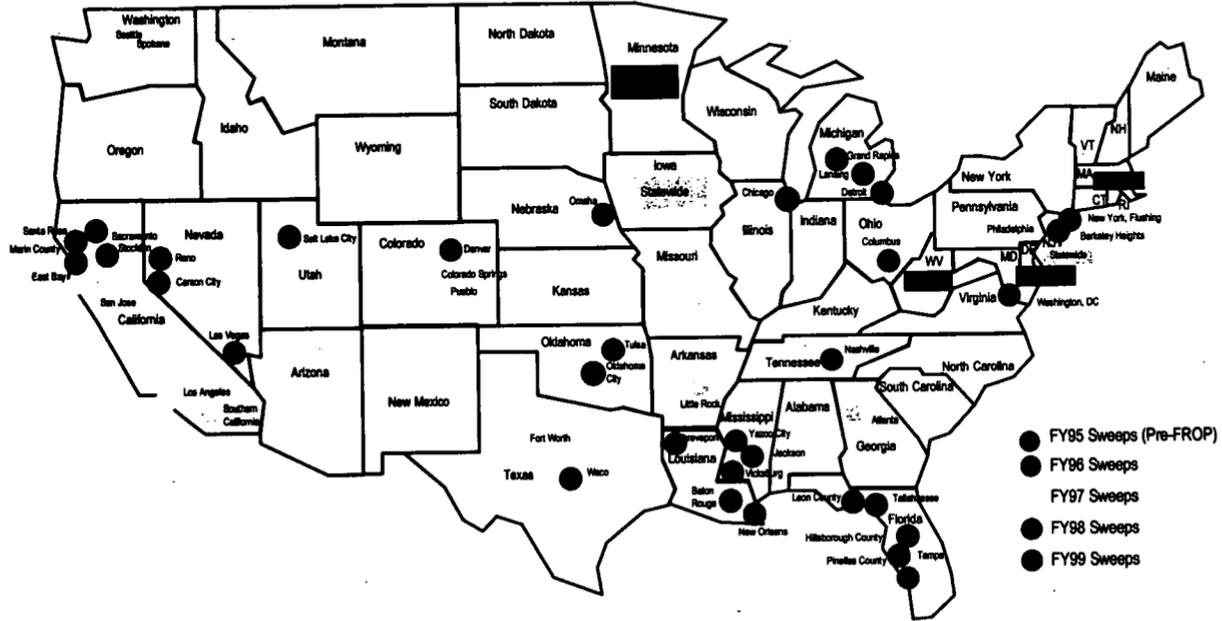
Senator BREAUX. Do you have the authority to assess fines to people who have violated? Have you assessed fines and what has the average fine been for someone perceived to be in violation of the law?

Ms. HARRINGTON. The total dollar amount in civil penalties paid in enforcement actions, consent decrees, has been over \$1.8 million, and I am sorry, but I don't have the average amount. I can tell you that the amount really varies greatly from a few hundred dollars to over \$120,000. I believe a hundred and twenty-some thousand is the largest civil penalty that has been paid in a Funeral Rule case.

The consent decrees look like any consent decree entered in a Federal court by the United States of America. The Department of Justice represents the Federal Trade Commission in civil penalty actions.

The average civil penalty assessed in Funeral Rule enforcement actions is approximately \$26,000.

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Senator BREAUX. OK. Who assesses the fine, if there is to be one? The court or—

Ms. HARRINGTON. Well, the court—

Senator BREAUX [continuing.] The Justice Department in a consent decree?

Ms. HARRINGTON. The court's order is what imposes the legal requirement to pay the civil penalty. The amount of the civil penalty is approved by the Federal Trade Commission, by the Commissioners.

Senator BREAUX. OK. Mr. Ayers, tell me a little bit about the bureau versus the board in terms of the makeup? Was the board basically heavily—did they have a large number of funeral operators on the board versus the bureau? I am trying to find out what is the difference between the makeup of the enforcement bureau versus the previous board in the regulated industry.

Mr. AYERS. The two boards had a majority of public members on them, on both of them, but yet they leaned toward the expertise of the industry members on the boards. There was wide differences in the board, and, therefore, probably the result in much ineffective work.

Senator BREAUX. The bureau is what?

Mr. AYERS. Under the bureau, we have a bureau chief. I work under the direction of the director of the Department of Consumer Affairs. We do not have an industry board.

Senator BREAUX. Where does the bureau get their expertise on the industry from? Do you have contacts with the industry? Are there meetings with the industry?

Mr. AYERS. We have contacts with the industry. Also, we have our inspectors, our field representatives, also licensees do work or are knowledgeable in the industry as well.

Senator BREAUX. Do you have an opinion of the effectiveness of funeral boards that are comprised primarily of funeral directors from the standpoint of regulation?

Mr. AYERS. Well, my analogy is pretty much like what one of our recent licensees asked me a couple of years ago when he said, "Is California going to go back to a board structure?" And I said, "Well, the administration at this point has no intentions to do that that I know of." He said, "Well, that is good." He said, "I would rather not be regulated by my competitors." And I think that speaks well to that.

Senator BREAUX. OK. Mr. Jacobson, on page 4 of the testimony—I think you gave us a different set of testimony today, an updated version of what I had originally received. But I think in this area it is the same. You point out what consumers have the right to, every consumer that comes into your funeral home has the right to a detailed and itemized price list before they make any purchase decision, et cetera. And you list other things they have the right to. Finally, they are given the unfettered right to use merchandise purchased outside of the funeral home and have the funeral director service that merchandise without any restrictions or fees.

I got to ask you, because the story in the Times Picayune has done a series on this by Bill Walsh, pointing out in one of—which is really a very excellent overall view of this thing, but it said, "In view of the State's funeral home industry"—let me start over. They

had a person in one of our towns, in Lake Charles, who went into the business of selling caskets. This guy probably should not have been in this business. He spent 3 short months as a casket retailer trying to sell Mexican-made coffins out of his storage space behind a friend's paint shop. I mean, you know, would you want to buy a casket from that person is the obvious question. But in view of the State's funeral home industry, the article continues, his career never should have started at all. Louisiana is one of about a dozen States that prohibit the sale of caskets by anyone but a licensed funeral director, and the State's industry-dominated Funeral Board has aggressively enforced the law.

So I guess your statement wherein you say that they have the unfettered right to use merchandise purchased outside of the funeral home is not true for my State and apparently for a number of other States.

Mr. JACOBSON. My place of business is in Iowa, and I am very well versed in what the Iowa laws are. And in Iowa, and in my funeral home, any person who wants to use an outside source for any items associated with the funeral service has a right to do that.

Senator BREAUX. I take it that while that is true in Iowa, that is obviously not true, apparently, in my State of Louisiana or any number of other States where the funeral industry has prohibited anybody selling a casket other than through the funeral home.

Mr. JACOBSON. Evidently that is correct. Our position has always been, as far as the National Association, that if it is good for consumers, if it is going to protect consumers, that is the direction we want to go. We want to make sure consumers have the right to select their merchandise wherever they wish to.

Senator BREAUX. So I take it that would be a recommendation to those States that do not allow that, that they should, in fact, allow that type of competition?

Mr. JACOBSON. I believe that is the position of the FTC as well. Our concern in this line is that currently a vast majority of the industry does not fall under the Federal Trade Commission regulations.

Senator BREAUX. You mean cemeteries—

Mr. JACOBSON. Cemeteries do not fall under them. A lot of crematories do not fall under them. Third-party casket—

Senator BREAUX. I take it your position is that they should and, Mr. Elvig, your position is that you should not.

Mr. JACOBSON. Very well.

Mr. ELVIG. Right.

Senator BREAUX. I got that. Thank you all very much.

Thank you, Mr. Chairman.

The CHAIRMAN. I think I want to start, Mr. Jacobson, with you, and this is kind of a question about whether or not you think the penalties that have been announced and imposed are deterrents. So let me ask the question this way: I understand that your trade association worked very closely with the FTC in developing the Funeral Rule Offender Program. If funeral homes face smaller fines and training through the Funeral Rule Offender Program as compared to civil monetary penalties, how much of a deterrence can this program be?

Mr. JACOBSON. I think it is still a tremendous deterrent. Most funeral homes are smaller. Seventy-five percent of the funeral homes across the Nation do less than 200 funerals a year. So they don't have large volumes of money just sitting there. So any kind of a fee or a program like this is expensive for a funeral home to enter into. And so it does provide a tremendous deterrent.

The CHAIRMAN. Ms. Harrington, following up on that with the FTC's involvement in it and your overseeing the program, how often has the FTC reviewed or visited the FROP run by the National Funeral Directors Association? And then before you answer, in written response to the committee, the only report that we have seen that indicates FTC's oversight of the program is a memorandum to the file by FTC dated 2 weeks after the committee's letter of inquiry describing an onsite meeting with the director of the FROP at the Funeral Directors Association headquarters. Is that the extent of the FTC's oversight of the FROP?

Ms. HARRINGTON. No. The FTC staff has met since the program was developed on numerous occasions here in Washington with the NFDA employee who is responsible for the operation of the program, with the general counsel of the NFDA, and with other representatives of the NFDA. So there has been an ongoing discussion. We have phone conferences, and as you note, well before we heard from the committee on this, one of our attorneys went out to Milwaukee and conducted a review onsite there of NFDA records concerning the program. But it certainly isn't the case that that one visit is the only instance of interaction between FTC staff and NFDA representatives, nor is it the case that this is not a program that we have exercised considerable oversight on. We have and we continue to.

And it is a new sort of effort for us. I think that the Congress recognized in recent years that, particularly with regard to small businesses and their compliance with Federal regulation and law, there is a need for Federal enforcement and regulatory agencies to develop some flexible and different procedures to account for the special needs and issues that come up with small businesses. And with that sort of notion very much in mind, as well as the overriding concern with consumer protection, we entered into this Funeral Rule Offenders Program experiment, and it has been a work in progress. It is something that we are looking at and making changes to all the time, to try to make it better, fairer, and more responsive to what we hear from consumers and the public.

The CHAIRMAN. Again, to you, Ms. Harrington, the General Accounting Office found that it was difficult to quantify the number and type of complaints about the funeral-related industry since there is no central repository for complaints. Has the FTC given thought to how that problem may better be addressed for consumers? Is there a way to establish a central repository for complaints either at the State or Federal level? It would seem to me that just filing a complaint with an office that can't do anything about the complaint would be a waste of time.

Ms. HARRINGTON. Well, as you know, Senator, the FTC has really taken the lead nationally in consumer complaint—in centralizing consumer complaint handling, storage, and retrieval. We have, for example, in the fraud area, the Consumer Sentinel Data base,

which was developed by the FTC. Resides in a highly secure site on the World Wide Web, and we have made that available to over 200 law enforcement agencies throughout the United States and Canada.

The difference between complaints of that sort, though, and these complaints is that those complaints enable law enforcement to track trends, to see that, for example, when a citizen in Iowa or Louisiana or somewhere else receives a telephone call from a fraudulent telemarketer and reports it, for law enforcement in that State to be able to quickly determine that there are many other citizens in its jurisdiction who have had the problem, and that there are citizens all around the country who have had the problem, because the businesses that are perpetrating those frauds are operating across State lines all over the United States and often now internationally.

The complaints about businesses in the funeral services industry are really of a different sort. They often—not always but often—are dealing with very small local businesses, and, frankly, it is of little use to a regulator in California to see what is happening with funeral homes that are operating in the State of Iowa. So it is a different kind of issue.

Finally, I would just observe that while the GAO noted that there is no central repository for all complaints about funeral goods and services in the United States, at the FTC there is a central repository for every single complaint that we receive. And that is why we have been able to produce chapter and verse, complaint by complaint for your staff, information about complaints received at the FTC. We have a very good system for tracking that, for reporting on that, and have a good handle on that.

The CHAIRMAN. Mr. Elvig, you probably heard my concerns addressed yesterday about pre-need contracts, not the contracts per se but about their portability. How do the ICFA model guidelines address that issue of portability?

Mr. ELVIG. That is the one guideline that we are still attempting to develop, Senator, and the issues there are definitions. As I said earlier, are we talking about graves? Are we talking about caskets? Are we talking about insurance policies? There are so many different types of pre-arrangement programs in different States, and a lot of them are fashioned around what the State's regulations might be.

So as we look at portability, as we attempt to draft a guideline on that, we are attempting to straddle all of those divergent sources of authority in creating a pre-arrangement contract.

Another big issue with them is time. In the State of Washington, it is 22.2 years between the time a pre-arrangement is made and consumed. Even there, it creates problems in defining portability. So we are working on that guideline, and when we have one, it will be in this committee's hands.

The CHAIRMAN. Could I ask, Mr. Jacobson, your thoughts about the portability of pre-need agreements?

Mr. JACOBSON. Our position is that we feel very strongly that portability should be a part of a pre-arrangement contract. Our association 3 years ago felt strongly enough about the problems with pre-need and the upcoming situation with it that we developed a

Consumer's Bill of Rights for pre-need, and I believe you all have a copy of that. And under that, one of the things that is important to us is that the consumer has the right to move that contract. I think that is one of the best ways you can protect a consumer.

The CHAIRMAN. I will go to Ms. Harrington now a little bit on the same subject. Again, getting back to pre-need sales and some testimony we heard yesterday, how has the FTC been involved in addressing the manner in which pre-need funeral, burial, and cremation sales are made? And it seems to me that an important consumer issue is just that. Is there any chance that pre-need sales might be addressed by the Funeral Rule?

Ms. HARRINGTON. Senator, they are addressed by the rule. The rule covers pre-need sales, and the Commission has brought enforcement actions under the rule involving alleged violations in the pre-need context. I think you are absolutely right to focus on problems in that area. It is something that we are and always have been concerned about and have covered by our rule.

The CHAIRMAN. I think going over the rest of my—no, here is a question I should ask Mr. Jacobson. I don't know the extent to which you can answer this industry-wide, but the issue of sealer caskets came up yesterday. Can you tell us about either from your own personal experience or generally throughout the industry the extent to which funeral homes sell sealer caskets and what purpose such caskets serve?

Mr. JACOBSON. I can tell you from my personal experience in my funeral home, we have a selection of both caskets with gaskets and caskets that do not have gaskets. We refrain from calling them a sealer casket simply because the difference between the caskets is whether or not it has a gasket and locking mechanism versus one that does not. But most funeral homes have a selection of non-sealing or non-gasketed caskets as well as gasketed caskets. Ultimately, the consumer has the choice.

The CHAIRMAN. I think we are about ready to wind up. Senator Breaux has one more thing.

Senator BREAUX. Thank you, Mr. Chairman, and thank the panel for their presentation. This is not an easy subject to deal with, but I think that the hearings have really, I think, helped to highlight some of the issues, and I think also to hopefully better inform consumers as to what their rights are as well as to hear from the industry about what they are doing to try and guarantee that industry is run according to what everybody in industry would agree is the right standards. And I think that progress is being made.

I was wondering, Ms. Harrington, this little guide that you have, what would you have to do to get this? Is this available—

Ms. HARRINGTON. Ask.

Senator BREAUX. I know, but I mean, if somebody dies in your family, I am not going to be writing to FTC for the little blue book. Is it available at funeral homes around the country?

Ms. HARRINGTON. We would be glad to make it available at funeral homes, at cemeteries. That would, of course, depend on the good will of funeral home operators, cemetery operators. But we will provide supplies of this at any business that is dealing with the public on these issues.

Senator BREAUX. Let me ask Mr. Jacobson, have you had a chance maybe to look at this or maybe your office has had a chance to look at this? I am just wondering whether the industry would have a problem with something like this sitting on the desk in a funeral home, that if someone is there with a family they could flip through it? It is only 15 pages or so.

Mr. JACOBSON. We certainly would not have any problem with giving consumers as much information as possible so they can absorb it before they have to make any type of choice.

Senator BREAUX. I don't want to pin you down on this particular one—

Mr. JACOBSON. I have not looked through the book—

Senator BREAUX [continuing]. Because you haven't seen it—

Mr. JACOBSON [continuing]. But as a general rule, any information we can get in the hands of the folks that are going to have to be making tough decisions is good for us and would be good for the consumer.

Senator BREAUX. I think that would be helpful because, I mean, I assume there is much misinformation by the average consumer, and they are probably in the worst time of their lives to make an educated, informed decision. So to have something that is sort of simple like this sitting on the table, you know, I think it would be very, very helpful. I am just trying to get AARP to send stuff out, but obviously if you hand this out to them when they come in as well as everything else you provide them, I think it would be very, very helpful as a recommendation.

I thank the Chair.

The CHAIRMAN. Before you leave, I would like to say thank you very much for the testimony that each of you gave us today. I think the information that you provided was all on point, and I see it as assisting the committee in understanding the many pressing consumer issues in a very, very large industry.

I think we have to look at the funeral and cemetery business as very unique. As such, I think they present unique challenges for the industry, for agencies like the FTC and State agencies, and, of course, for consumers. And I think we have to accept that arranging a funeral isn't like buying a car. Consumer magazines don't rate funeral homes or caskets. Consumers don't shop around and compare prices when it comes to funeral planning. And, obviously, I think to some extent it is because people are reluctant to discuss their mortality, or it could even be that people don't buy funerals until they need one for a family member.

Some of the same feelings may contribute to the lack of complaints to the various government agencies about funerals. Maybe consumers feel uncomfortable complaining to the Government about a personal family experience. Maybe it doesn't occur to them that they have any recourse, or if it does, maybe they don't know where to turn. And yet I have been involved with a lot of petty complaints to funeral directors, even probably from some of my own relatives, about something wasn't quite right this way or that way about a certain aspect of a person being in the casket or some other part of a funeral, and sometimes found that embarrassing, quite frankly. But I know what you have to put up with, as you mentioned very well, Mr. Elvig, in your case.

In any event, the special circumstances surrounding a funeral and burial present a challenge for all of us who have an interest in protecting consumers, as I know anybody in the industry has to do that or they wouldn't have a business. We all have to work together to provide the best services to people at competitive prices, and this is especially important as our Nation ages at an unprecedented rate and the funeral business will be obviously taking care of more deaths as we have the biggest demographic shift in our country when the baby boomers come into retirement in the year 2010.

And along that line, Senator Breaux and I for the 3½ years that we have been working together on this committee, whether it has been Social Security or Medicare or pension plans or nursing homes, a lot of oversight work we have done, we have tried to be ahead of the curve as far as the baby boomers retiring. And it may look down the road a long time, the year 2010 when that happens, but that is almost tomorrow considering the way Congress acts sometimes. So, consequently, I hope that those of you see us overseeing the funeral industry somewhat as we oversee assisted living, nursing homes, bad eggs in the financial lending industry, et cetera, et cetera, even bad things within Congress not being prepared to make the changes that have to be made in Social Security and Medicare.

Probably Senator Breaux and I are the brunt of criticism from our colleagues of trying to push things too far and too fast, much as Mr. Jacobson has probably felt about our holding this hearing.

So we just think that the Aging Committee has a responsibility since we became chairman and ranking member in 1997 to anticipate these things and be ahead of it.

Just maybe a couple things that we will be looking at, although the entire record has to be a basis for any action we take, but we are going to be looking for common-sense solutions, and we are going to be concerned about the sealed caskets, their effect. We are going to be concerned about the sale of pre-need agreements, their portability, things of that nature, because, again, with baby boomers going into retirement, there is just going to be more use of those arrangements and agreements.

There are too many findings in the 2 days of hearings to recount right here, and so I am not going to take your time to do that. Suffice it to say that we have made a good start toward identifying consumer issues and finding solutions to those issues. I thank each of you for your contributions toward this end, and the extent to which we have tried to be transparent in everything that we have done since the news conference last October, both from the standpoint of advocates for the consumers as well as people in the industry, we will continue to have an open door.

Before I say the last sentence, I have had Mr. Elvig ask for permission to speak.

Mr. ELVIG. It is just a comment about your process. You said at the opening of your hearing yesterday it was non-partisan. I want to tell you, we heard that during the evening hours also, and the respect that we see as people out there in the hinterland that is shown between the two of you shows the non-partisan nature, and

that is refreshing and that is good to know. And for that—I can't speak for all the panelists, but we appreciate it.

The CHAIRMAN. Well, I think the average constituent thinks that Senator Breaux as a Democrat and Senator Grassley as a Republican never speak to each other. But I hope that they understand particularly in the U.S. Senate, absolutely nothing gets done because of the filibuster rule and because of the 60 votes that it takes to stop debate, absolutely nothing gets done unless there is cooperation between the two political parties, at least a minority of one party working with the vast majority of another party for things to get done. And I have enjoyed and will continue to enjoy working not only on this committee but on the Senate Finance Committee with my colleague from Louisiana.

So we are going to leave the record open for 2 weeks to receive additional information from any witnesses who testified or from any other interested individual or organization. So that gives me a chance to respond to what Mr. Jacobson said in the sense that anything that is not out there that you or any of your individuals or State associations or national associations or even any of your competing associations want to put in the record, if you can get that to us within 2 weeks, it will be included as if stated here at this meeting.

So, with that in mind, I adjourn the meeting and thank you all for your kind attention.

[Whereupon, at 11:46 a.m., the committee was adjourned.]

A P P E N D I X

DEATHS AND FUNERALS IN THE UNITED STATES (1997)

Deaths in the United States	2,314,245
Deaths Managed by Funeral Homes	1,884,952 (81.4%)
Funeral Homes in the United States	22,152
Annual Funerals Per Funeral Home	85
Weekly Funerals Per Funeral Home	1.6

SOURCE: National Center for Health Statistics
National Funeral Directors Association

1999 Total Number of Entries Classified as Cemetery
as compiled by the Geographic Name Information System (GNIS)
(Partial Listing Only- USGS Research Project Not Yet Completed)

<u>State</u>	<u>Number</u>	<u>State</u>	<u>Number</u>	<u>State</u>	<u>Number</u>
AL	6,610	LA	2,571	OH	5,502
AK	17	ME	1,128	OK	2,129
AZ	186	MD	1,125	OR	1,073
AR	4,188	MA	1,148	PA	2,509
CA	772	MI	2,031	RI	16
CO	516	MN	2,212	SC	2,326
CT	663	MS	6,245	SD	1,095
DE	82	MO	5,365	TN	12,293
FL	1,082	MT	681	TX	5,803
GA	5,585	NE	1,407	UT	384
HI	32	NV	70	VT	467
ID	293	NH	411	VA	4,829
IL	5,899	NJ	446	WA	439
IN	3,366	NM	594	WV	3,053
IA	2,993	NY	3,003	WI	2,561
KS	2,257	NC	2,645	WY	158
KY	3,896	ND	1,103		

Estimate of Total Cemeteries

200,000+

SOURCE: United States Geological Survey

FUNERAL AND BURIAL COSTS NATIONAL AVERAGES

The Rising Costs of an Adult Funeral

		<u>% Increase</u>			<u>% Increase</u>
1980	\$1,809		1995	\$4,624	24%
1985	\$2,787	54%	1996	\$4,782	3%
1991	\$3,742	34%	1998	\$5,020	5%

Costs include casket, professional fee, embalming, cosmetology, viewing and funeral home service. (This does NOT include cemetery and/or burial charges.)

SOURCE: National Funeral Directors Association

Breakdown of Funeral Items (1998)

Casket	\$2,176	Hearse	\$179
Professional service charge	\$1,182	Body pickup	\$159
Embalming	\$ 401	Cosmetology	\$151
Service at funeral home	\$ 357	Service car	\$ 87
Viewing	\$ 314	Acknowledgment cards	\$ 14

SOURCE: National Funeral Directors Association

Burial and Monument Costs (1998)

The average funeral may cost \$5,020, but this does not include:

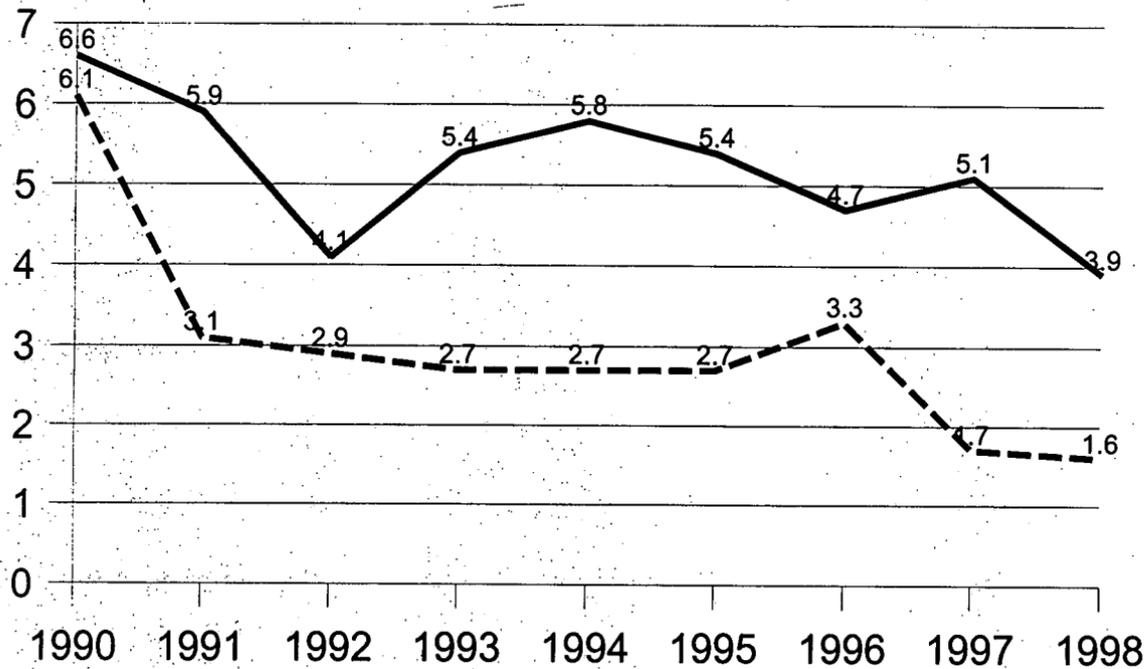
Gravesite	\$500 and up
Grave Opening and Closing Fees	\$500 and up
Burial Vault	\$300-\$10,000
Monument	\$1,200

SOURCE: The Funeral HELP! Program (<http://dragonet.com/funerals/a.htm>) based on an AARP study

TOTAL AVERAGE COSTS FOR FUNERAL, BURIAL AND MONUMENT \$7,520

It is important to note that this figure is based on the lower end of national averages. Costs can climb rapidly depending on what a consumer chooses.

Percent Change in Consumer Price Index (CPI) from Previous Year



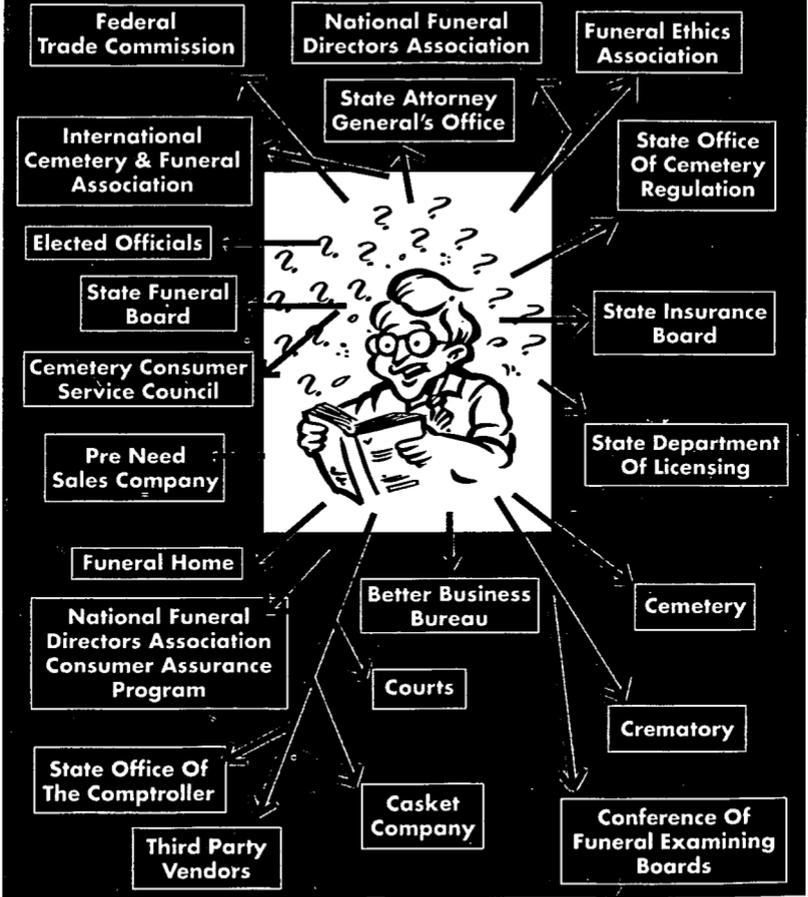
— Consumer Price Index for funeral expenses
- - - Consumer Price Index for all consumer items

1995 CASKET COST COMPARISON

TYPE	RETAIL	WHOLESALE	PROFIT
Cloth-covered	\$500	\$167	199%
Pine (solid)	\$1,897	\$749	153%
Oak (solid)	\$2,600	\$801	224%
Steel (16g)	\$2,255	\$1,074	109%
Poplar (solid)	\$3,050	\$386	690%
Cherry (solid)	\$3,550	\$1,284	176%
Steel (stainless)	\$4,050	\$989	309%
Mahogany (solid)	\$8,500	\$1,810	369%
Bronze (48oz.)	\$31,000	\$3,725	732%
Copper (solid)	\$33,000	\$1,625	1,930%
AVERAGE CASKET MARKUP			489%

SOURCE: Wasick, John J., "Fraud in the Funeral Industry" Consumer Digest, September/October 1995, at 53.

Funerals And Burials: Where Do I Go To Complain?



THE FUNERAL RULE

April 1984 Federal Trade Commission (FTC) implemented the rule to regulate providers of funeral goods and services

A Funeral Provider must provide:

- casket price list
- outer burial container price list
- general price list
- statement of funeral goods and services

A Funeral Provider must refrain from misrepresentations regarding:

- embalming
- caskets for cremation
- outer burial container
- general provisions on legal and cemetery requirements
- preservative and protective value claims

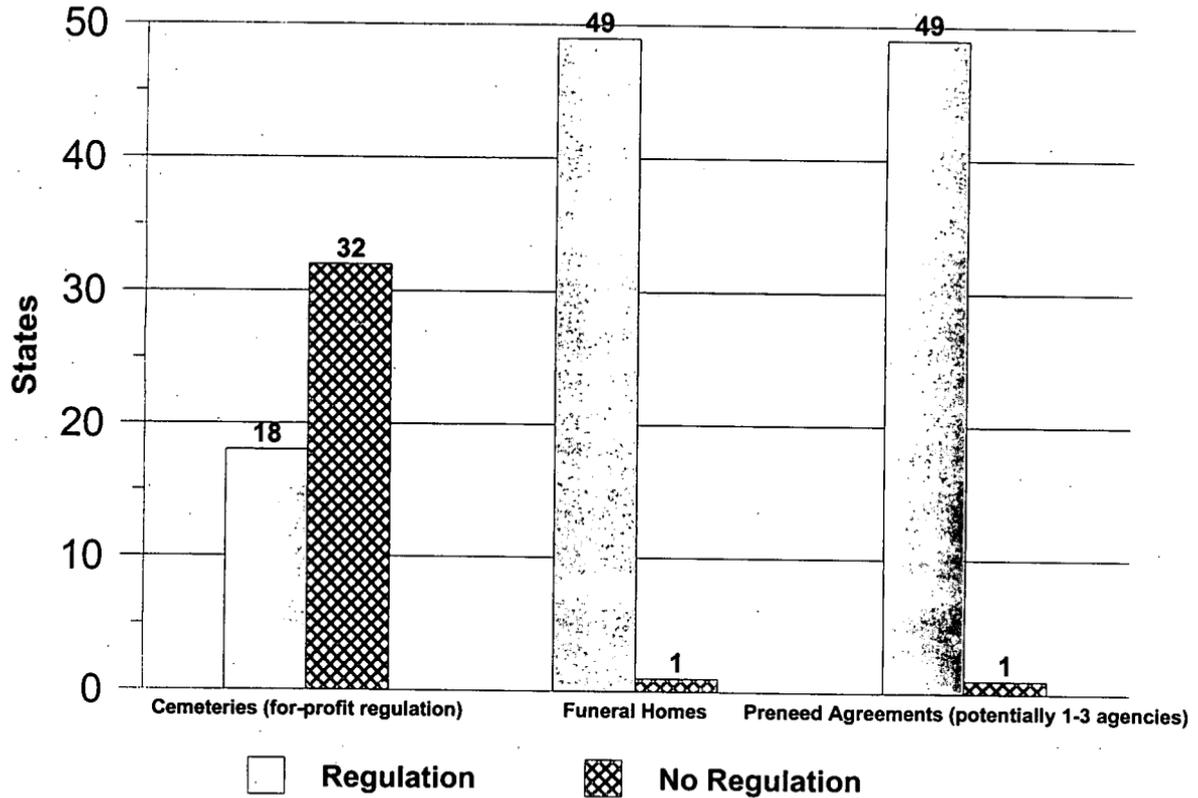
July 1994 **Amended to:**

- clarify price disclosure and “unbundling” provisions
- eliminate the imposition of “casket handling fees”
- repeal the affirmative telephone disclosure requirement

April 1999 FTC began a review process of the Funeral Rule

SOURCE: Funeral Industries Practice Rule, 16 C.F.R. § 453 (1984)
59 Fed. Reg. 7, 1592 (1994)

State Regulation of Funeral Homes, Cemeteries and Preneed Agreements



1999 GAO SAMPLE STATE LAW STUDY

(GAO: "Funeral-Related Industries: Complaints and State Law Vary, and FTC Could Better Manage the Funeral Home" GAO/GGD-99-156)

States Selected for the Study:

California	New York
Florida	Texas
Maryland	

PRENEED ARRANGEMENTS

States with Trusting Requirements	5	(CA, FL, MD, NY, TX)
Contracts directly transferable to another state	2	(MD, NY)
State consumer protection trust fund	2	(FL, TX)

CEMETERIES

Jurisdiction over all cemeteries w/in state	0	
Restrictions on what cemeteries can sell	1	(NY)
Requirement that state regulatory office produce a consumer brochure for consumers who inquire about cemetery goods and services	2	(CA, MD)

FUNERAL HOMES

Requirement that low-cost caskets be included as part of funeral home displays	3	(FL, NY, TX)
Required annual inspections of all funeral homes	2	(FL, MD)
Requirement that state regulatory office produce a consumer brochure for consumers who inquire about funeral goods and services	3	(CA, MD, TX)



SENATE SPECIAL COMMITTEE ON
AGING

Senator Chuck Grassley, Iowa, Chairman
Senator John Breaux, Louisiana, Ranking Member

Senator Grassley's Consumer Tips on Funerals and Cemeteries

- Shop around. You may realize cost savings by calling several funeral homes.
- Be an informed consumer. It can only help to ask questions.
- Pre-planning doesn't necessarily mean pre-paying. Plan ahead, but be careful.
- Take a family member or friend along with you when planning a funeral.
- Remember to have everything discussed put in writing.
- Read any document you plan on signing very carefully.
- Find out if the agreements you sign are revocable.
- Find out if your funeral agreement is transferrable to other funeral homes.
- Federal law requires funeral homes to provide price lists. You don't have to buy any goods or services you don't want.
- Funeral providers must give you prices and other information over the phone when you ask.
- Embalming is not required by law, except in certain special cases.
- Caskets are not required for direct cremations.
- Funeral providers cannot tell you that a particular item or service can preserve a body indefinitely or for an extended period of time.
- If you have a complaint, state and federal resources can help you.

During the hearings of April 10 and 11, Chairman Grassley indicated that the Committee record would be held open for two weeks in order to receive additional written testimony. Attached is my written testimony regarding the statements made by Irwin Karp on April 10.

Please call me if you have any questions 916-323-5429.

Testimony of G.V. Ayers, Bureau Chief
Cemetery and Funeral Bureau
Department of Consumer Affairs
State of California

Additional Testimony

I would like to say a few words regarding Irwin Karp's testimony yesterday. Mr. Karp's illegal activities occurred under the former California Board of Funeral Directors and Embalmers. At that time the board did not have the money to go after him. In 1995, he surrendered his funeral establishment license to the board, and was going to repay the missing money, he never did.

When the Ventura County District Attorney prosecuted Karp criminally, a bureau field representative educated the DA on preneed law, and twice appeared in court to provide essential testimony at the trial.

A number of changes in California law have taken place since Mr. Karp had his heyday:

1. Since 1997, funeral establishment managers must be separately licensed as a funeral director (California Business and Professions Code 7616.2).
2. Since 1997, at need sales persons must be trained in and demonstrate knowledge of Federal and State funeral laws (California Business and Professions Code 7635). Preneed insurance salespersons are regulated by the California Department of Insurance. However, preneed sales persons are not required to be otherwise trained or licensed.
3. Since 1994, crematories must have a body identification system, which uses a unique number to track cremated remains (California Health and Safety Code 8344).
4. Since 1995, the "constructive delivery" funeral scheme that Karp describes has been illegal (Title 16, California Code of Regulations 1262). Under this scheme, part of the consumers money goes into trust for funeral services, and part (Karp describes one half) is taken by the company as payment for goods? Which will be used at time of death.
5. In 1997, the Neptune Society of Los Angeles at San Pedro, the Neptune Society of Los Angeles at Burbank, and the Neptune Society of Santa Barbara were placed on probation for trust fund and other violations.

6. In 1998, for additional violations, the Neptune Society of Los Angeles at San Pedro, the Neptune Society of Los Angeles at Burbank, and the Neptune Society of Santa Barbara along with Heritage Crematory (all under common ownership) were shut down and required to be sold to new independent owners.

**SUPPLEMENTAL STATEMENT OF THE
NATIONAL FUNERAL DIRECTORS
ASSOCIATION
BEFORE THE
UNITED STATES SENATE
SPECIAL COMMITTEE ON AGING
ON ISSUES RELATED TO FUNERAL
SERVICE AND THE FUNERAL RULE**

APRIL 24, 2000

NATIONAL FUNERAL DIRECTORS ASSOCIATION

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Robert E. Harden,
Executive Director

On March 27, 2000, the National Funeral Directors Association (“NFDA”) submitted a written Statement to the Special Committee on Aging on the issues related to funeral service and the Funeral Rule. It also provided oral testimony on April 11, 2000 through Jay Jacobson, a funeral director from Iowa and the President-Elect of the Iowa Funeral Directors Association.

During the Committee hearings held on April 10 – 11, 2000, the Chairman indicated that interested parties could submit supplemental comments until the close of the record on April 25, 2000. NFDA is filing this Supplemental Statement in order to address certain issues that arose during the hearings. Specifically, this Supplemental Statement will discuss portability and consumer revocation of preneed funeral contracts, mark-ups on casket prices, and the general issue of consumer protection versus competition in the preneed funeral industry.

**A. PORTABILITY AND CONSUMER REVOCATION
OF PRENEED FUNERAL CONTRACTS**

One of the issues that the Chairman indicated the Special Committee on Aging had particular concerns with was the ability of preneed consumers to transfer preneed contracts to other funeral providers. Unfortunately, this issue did not receive much attention during the hearings. Because NFDA and its members share the Committee’s belief that this is an important issue for preneed consumers, we are submitting additional information for the Committee’s consideration.

In examining this issue, it is vitally important to distinguish preneed **funeral** contracts from preneed **cemetery** contracts. In most states, there are separate laws and regulations that govern preneed funeral contracts and preneed cemetery contracts. Therefore, the Committee must be careful not to assume that portability problems that may arise with the purchase of cemetery property and services also applies to preneed funeral contracts.

Earlier this year, NFDA forwarded to the Committee Staff its 1999 Preneed Law Manual which analyzed the preneed laws and regulations of each state.¹ From this analysis, we have prepared the chart attached as Exhibit A entitled "State Law Analysis for Preneed Funeral Service Contracts." That chart demonstrates that of the 49 states regulating preneed funeral contracts, 46 states permit consumers to enter into revocable preneed contracts. The revocable preneed contracts allow consumers to cancel the contract and move the preneed funds to other funeral providers. Therefore, with revocable contracts, portability is guaranteed for consumers.

Because many consumers are elderly and may either be receiving Medicaid benefits or anticipating applying for Medicaid benefits in the future, they prefer to use irrevocable preneed contracts instead of revocable contracts. For Medicaid eligibility purposes, an irrevocable preneed funeral contract and the funds provided to pay for it are not a countable resource of the preneed consumer. Therefore, the preneed consumer may purchase an irrevocable preneed funeral contract without adversely affecting his or her Medicaid eligibility.

A consumer using an irrevocable preneed contract does not have the automatic right to cancel the contract. However, in many states, they are given the legal right to transfer the irrevocable contract (and the trust funds or insurance policy set aside to pay for that contract) to another funeral provider. In addition, in those states that do not have express portability provisions for irrevocable preneed contracts, funeral homes will generate transfer the preneed contracts anyway since they will not be able to withdraw the preneed trust funds or collect on the preneed insurance policy unless they perform the funeral. Knowing that they cannot access preneed trust funds or collect on preneed insurance policies for funerals they will not provide, the funeral home will transfer the contract to the new funeral home selected by the consumer.

¹ Every state, but Alabama, regulates preneed contracts sold by funeral providers.

In addition to providing the consumer with the option to have a revocable contract and the right of portability, it is important to disclose to consumers that they possess these rights. In NFDA's Preneed Bill of Rights, a copy of which is attached as Exhibit B, funeral directors recognize that preneed consumers are entitled to a written disclosure informing them under what circumstances they can transfer the preneed contract to another funeral home. They are also entitled to a written explanation of whether and under what circumstances they may cancel the preneed contract and how much of the trust funds will be refunded to the consumer.

NFDA has expressed its willingness to the Federal Trade Commission and to AARP to jointly formulate guidelines and/or model preneed disclosure laws for states to adopt. Many states have already enacted detailed disclosure requirements that must be contained in preneed funeral contracts regarding portability, revocation, trusting, et cetera. These statutes and regulations, together with NFDA's Preneed Bill of Rights, will provide us with a comprehensive framework on which to construct model preneed funeral consumer disclosure provisions.

B. PROFIT MARGINS ON CASKET SALES

During the Chairman's introductory remarks on April 10, 2000, he indicated that the standard mark-up on caskets in the funeral industry was 5.00 times cost. Because this mark-up figure cited by the Chairman greatly exceeded mark-up levels customarily used by funeral homes, NFDA asked Federated Funeral Directors of America, an independent accounting firm for 1,500 funeral homes in 44 states, to examine this issue. Statistics provided by Federated Funeral Directors of America have been cited and relied upon extensively by the Federal Trade Commission throughout Funeral Rule proceedings.

In Exhibit C attached to this Supplemental Statement, Federated Funeral Directors of America explains that the average casket mark-up in 1999 for the 200,000 funeral services

performed by its 1,500 funeral home clients was 2.54 times cost. Furthermore, during the first three months of 2000, the average mark-up declined slightly to 2.51 times cost.

The belief by the Chairman that the average mark-up on caskets is more than double what it actually is, demonstrates the critical need for the government to rely upon actual data and not unsubstantiated claims and scuttlebutt provided by critics of the funeral profession. NFDA has been very forthcoming in providing data and information requested by the Committee. As the national representative of funeral service, NFDA reaffirms its willingness to assist the Committee and respectfully requests that the Committee use it as a resource when questions regarding the operation of the funeral industry arise.

C. CONSUMER PROTECTION VERSUS COMPETITION

As the Special Committee on Aging is undoubtedly aware, there are a number of preneed regulatory issues that present an ongoing clash between those promoting consumer protection and those espousing greater competition in the industry. For example, the Committee heard the testimony of Irwin Karp, the convicted preneed seller of cremation services in California. His presentation raised the issue of whether tighter licensing of preneed sellers could have prevented a dishonest individual such as Mr. Karp from defrauding preneed consumers. On the other hand, unregulated segments of the funeral industry consistently criticize any governmental effort to license preneed sellers as nothing more than veiled attempts by the licensed funeral profession to protect itself from competition.

This conflict between consumer protection and competitive interests permeates many preneed regulatory initiatives. For example, the State of Virginia enacted prohibitions against using commissioned salespersons to actively solicit preneed consumers. Critics of the prohibition claim that these anti-solicitation provisions were designed only to restrict preneed

markets to licensed funeral homes. However, as was evident from testimony heard by the Committee regarding the abusive practices of a commissioned preneed salesman in Florida, these anti-solicitation prohibitions serve a clear consumer protection purpose.

Another issue in this ongoing debate has been the question of what trusting level a state should set for preneed funds. Approximately 20 states believe that as a consumer protection measure, it is appropriate to require preneed funeral sellers to place 100% of prepaid consumer funds into trust until the funeral is performed. However, those who wish to engage in active preneed programs using commissioned salespersons allege that 100% is anti-competitive because it precludes them from using prepaid funds to pay sales commissions.

This brief overview aptly demonstrates that there are no simple solutions to many preneed regulatory issues. As the preneed industry has grown over the past 25 years, states continue to enact new initiatives to protect consumers without unduly quashing competition in the preneed markets in their states.

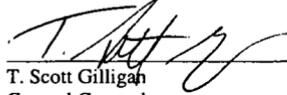
While the debate over these regulatory issues will continue for many years to come, NFDA believes that there is general consensus in the funeral profession regarding the need to provide full disclosure to preneed consumers. This consensus led to the establishment by NFDA of its Preneed Bill of Rights which guarantees the preneed funeral consumer full written disclosure on portability, revocation, taxation, trusting, and other important preneed issues.

NFDA will work with the FTC, AARP and others to make the Preneed Bill of Rights the basis for model state legislation on preneed consumer contract disclosures.

Respectfully submitted,

NATIONAL FUNERAL DIRECTORS ASSOCIATION

By:



T. Scott Gilligan
General Counsel
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Cincinnati, Ohio 45202
(513) 241-5540

**STATE LAW ANALYSIS FOR
PRENEED FUNERAL SERVICES CONTRACTS**



STATE	REVOCABILITY	PORTABILITY
Alabama	No	No
Alaska	Yes	Yes (by revocation)
Arizona	Yes	Yes (by revocation)
Arkansas	Yes	Yes
California	Yes	Yes
Colorado	Yes	Yes (by revocation)
Connecticut	Yes	Yes
Delaware	Yes	Yes (by revocation)
Florida	Yes (except merchandise)	Yes (by revocation)
Georgia	Yes	Yes (by revocation)
Hawaii	Yes	Yes (by revocation)
Idaho	Yes	Yes (by revocation)
Illinois	Yes	Yes
Indiana	No (after 30 days)	Yes
Iowa	Yes	Yes (by revocation)
Kansas	Yes	Yes
Kentucky	Yes	Yes
Louisiana	Yes	Yes (by revocation)
Maine	Yes	Yes (by revocation)
Maryland	Yes	Yes
Massachusetts	Yes	Yes
Michigan	Yes	Yes (by revocation)
Minnesota	Yes	Yes (by revocation)
Mississippi	Yes	Yes (outside of 50 miles)
Missouri	Yes	Yes
Montana	No (without mutual consent)	No
Nebraska	Yes	Yes (by revocation)
Nevada	Yes	Yes
New Hampshire	Yes	Yes (by revocation)
New Jersey	Yes	Yes (by revocation)
New Mexico	Yes	Yes (by revocation)
New York	Yes	Yes (by revocation)
North Carolina	Yes	Yes
North Dakota	Yes	Yes (by revocation)
Ohio	Yes	Yes (by revocation)
Oklahoma	Yes	Yes
Oregon	Yes	Yes (by revocation)
Pennsylvania	No	No
Rhode Island	Yes	Yes
South Carolina	Yes	Yes
South Dakota	Yes	Yes
Tennessee	Yes	Yes
Texas	Yes	Yes (by revocation)
Utah	No (unless FH will not perform)	No (unless FH will not perform)
Vermont	Yes	Yes
Virginia	Yes	Yes
Washington	Yes	Yes (by revocation)
West Virginia	Yes	Yes
Wisconsin	Yes	Yes
Wyoming	Yes	Yes (by revocation)



Consumer Preneed Bill of Rights

Prior to purchasing any funeral goods or services or signing a preneed funeral contract, we urge you to ask us any and all questions you may have regarding your preneed purchases.

To ensure that you, as our client family, have a full understanding of the preneed funeral transaction, we guarantee the following rights and protections.

We will:

- 1 Provide you with detailed price lists of services and merchandise before you select services and merchandise.
- 2 Provide to you, at the conclusion of the funeral arrangement conference, a written statement listing all of the services and merchandise you have purchased and the price.
- 3 Give you a written preneed funeral contract explaining, in plain language, your rights and obligations.
- 4 Guarantee in the written preneed contract that if any of the merchandise or services you have selected are not available at the time of need, merchandise or services of equal or greater value will be substituted by us at no extra cost to you.
- 5 Explain in the written preneed contract the geographical boundaries of our service area and under what circumstances you can transfer the preneed contract to another funeral home if you were to relocate or if the death were to occur outside of our service area.
- 6 State in the written preneed contract where and how much of the funds you pay to us will be deposited until the funeral is provided.
- 7 Explain in the written preneed contract who will be responsible for paying taxes on any income or interest generated by the preneed funds that are invested.
- 8 Inform you in the written contract whether and to what extent we are guaranteeing prices of the merchandise and services you are purchasing. If the prices are not guaranteed, we will explain to you in the written preneed contract who will be responsible for paying any additional amounts that may be due at the time of the funeral.
- 9 Explain in the written preneed contract who will receive any excess funds that may result if the income or interest generated by the invested preneed funds exceed future price increases in the funeral merchandise and services you have selected.
- 10 Explain in the written preneed contract whether and under what circumstances you may cancel your preneed contract and how much of the funds you paid to us will be refunded to you.

**FEDERATED
FUNERAL DIRECTORS OF AMERICA**

P.O. Box 19244
Springfield, Illinois 62794-9244
(217) 525-1712
FAX (217) 525-2104



April 21, 2000

T. Scott Gilligan, Esq.
NFDA General Counsel
525 Vine Street
Suite 2200
Cincinnati OH 45202

Dear Scott:

Federated provides a wide variety of accounting, business and consulting services to funeral homes throughout the country. Clients range in size from small rural operations to large urban firms conducting over 1000 calls annually.

For over 50 years, Federated has been compiling statistical data which reflects the operating results of its independent funeral director clients. Our figures for 1999 are based on an analysis of approximately 200,000 services conducted by nearly 1500 privately owned firms in 44 states.

During 1999, the typical family selected a casket with an average retail price of \$1988. At the same time, the average wholesale casket cost was \$783. This translates to an average markup of 2.54 times cost. During the first three months of 2000, the average markup declined slightly to 2.51 times cost.

Feel free to call if you have any questions about these averages.

Sincerely,

Ken Rodenburg
Vice President

KHR/ds





Audubon III, Suite 220
 1895 Preston White Drive
 Reston, VA 20191
 Telephone: 703.391.8400
 Toll free: 1.800.645.7700
 Fax: 703.391.8416

April 17, 2000

VIA FAX and First Class Mail

The Honorable Charles E. Grassley
 United States Senate
 Washington, D.C. 20510

Re: Expansion of the FTC Funeral Rule

Dear Chairman Grassley:

Thank you for inviting us to testify at last week's hearing by the Special Committee on Aging concerning funeral-related industries. We hope that by focusing our comments on the issues, many concerns were placed into their proper perspective. During the hearings, some references were made to the potential expansion of the Federal Trade Commission's (FTC) Funeral Rule. The International Cemetery and Funeral Association (ICFA) supports the Funeral Rule in its present form but urges caution with respect to efforts to expand the Rule to cemeteries and other sellers for the following reasons.

According to FTC procedures, the Funeral Rule is presumptively valid in its present form. However, an expansion of the Rule to sellers other than funeral homes requires a finding that 1.) Consumers are suffering actual harm from sellers not currently under the Rule; 2.) The harm is widespread and prevalent; and 3.) The Funeral Rule would remedy that harm.

The evidence in the FTC rulemaking record on the Funeral Rule to date and the testimony presented to the Special Committee on Aging last week contain no evidence of widespread harm to consumers by cemeteries and other sellers that would be prevented, remedied, or in any way addressed by the Funeral Rule. However, expansion of the Rule would subject literally thousands of cemeteries, most of which are small businesses, to costly fines for paperwork violations. In addition, tens of thousands of other cemeteries would be exempt from coverage under the Funeral Rule because the FTC's jurisdiction does not extend to nonprofit entities that compose the overwhelming majority of cemeteries in the United States. The results would be confusing at best and inequitable at worst.

There is no question that the various price disclosures and other provisions of the Rule are worthwhile and help consumers to make informed decisions. The ICFA has in fact incorporated many of these concepts into its Code of Ethics as a condition for membership in the Association. The ICFA also works with the Better Business Bureau, state consumer protection agencies, and related organizations to informally resolve complaints. It is rare to receive a complaint involving a Funeral Rule-type violation and when it occurs, it seems to involve a religious or municipal cemetery that would be exempt from FTC coverage in any event.

Sen. Charles E. Grassley
April 17, 2000
Page Two

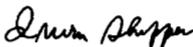
Recently, AARP published a number of surveys concerning consumers' experiences with cemeteries. These surveys were provided to the Aging Committee as part of AARP's written comments. A 1999 "Funeral and Burial Planners Survey" contacted 2,600 consumers by phone but found only 358 individuals who bought cemetery lots, merchandise or services. While this survey has been publicized for finding that "one-third of the consumers were not given written price lists by the cemetery," in fact that statistic refers to only one-third of the 8 percent who said they bought cemetery property or about 3 percent of those surveyed. More importantly, since the Funeral Rule is primarily a price disclosure regulation, the AARP survey contains no allegation that cemeteries are unwillingly to give consumers price information or that the prices quoted, whether written or oral, are not accurate and truthful.

Another recent AARP publication, "The Cemetery Mystery Shop Report," readily admits it is "anecdotal evidence" and "not quantitative research that allows us to generalize to other for-profit cemeteries." AARP volunteer "shoppers" visited 106 cemeteries but shopped 64 cemeteries twice, thus resulting in double counting of the results. AARP claimed that "two-thirds of all shoppers were not shown written prices" yet acknowledged elsewhere in the Report that 28 percent of the cemeteries volunteered price information on lots. Again there is no allegation that the information provided was not truthful and accurate. Of particular interest, the Report noted that 96 percent of the shoppers left the cemeteries with all their questions answered and 87 percent felt no pressure to buy anything.

The ICFA supports meaningful laws and regulations to protect consumers when making funeral and burial purchasing decisions. As you know, we recently published a series of 27 model guidelines for state laws and regulations that we submitted to the Aging Committee. However, the ICFA is concerned with burdensome new laws that do little to protect consumers but serve only to increase the cost of doing business to sellers. These types of laws are counter-productive and ultimately anti-consumer.

For these reasons, we ask you to carefully consider the calls to expand the Funeral Rule to additional sellers. Should it be determined that some form of federal regulation covering cemeteries is needed, we respectfully urge that the Funeral Rule itself is not appropriate.

Very truly yours,



Irwin W. Shipper, CCE
Chairman
Government and Legal Affairs Committee



Audubon III, Suite 220
1895 Preston White Drive
Reston, VA 20191
Telephone: 703.391.8400
Toll free: 1.800.645.7700
Fax: 703.391.8416

Post-Hearing Comments by

the International Cemetery and Funeral Association

Regarding the Hearing, "Funerals and Burials: Protecting Consumers from Bad Practices"

of April 10 - 11, 2000

Before the Special Committee on Aging

U.S. Senate

April 25, 2000

GUARDIANS OF A NATION'S HERITAGE

Chairman Grassley, Senator Breaux, and Members of the Committee:

Thank you for inviting the International Cemetery and Funeral Association to testify at the April 10-11 hearings by the Special Committee on Aging concerning funeral-related industries. We hope that by focusing our comments on the issues, many concerns were placed into their proper perspective. We are prepared to discuss any specific issues you wish to address and take this opportunity to submit these post-hearing comments on selected issues we believe the Committee should consider. Please include these comments with the hearing record.

Expansion of the FTC Funeral Rule

During the hearings, some references were made to the potential expansion of the Federal Trade Commission's (FTC) Funeral Rule. The International Cemetery and Funeral Association (ICFA) supports the Funeral Rule in its present form but urges caution with respect to efforts to expand the Rule to cemeteries and other sellers for the following reasons.

According to FTC procedures, the Funeral Rule is presumptively valid in its present form. However, an expansion of the Rule to sellers other than funeral homes requires a finding that 1.) Consumers are suffering actual harm from sellers not currently under the Rule; 2.) The harm is widespread and prevalent; and 3.) The Funeral Rule would remedy that harm.

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consumers by cemeteries and other sellers that would be prevented, remedied, or in any way addressed by the Funeral Rule. However, expansion of the Rule would subject literally thousands of cemeteries, most of which are small businesses, to costly fines for paperwork violations. In addition, tens of thousands of other cemeteries would be exempt from coverage under the Funeral Rule because the FTC's jurisdiction does not extend to nonprofit entities that compose the overwhelming majority of cemeteries in the United States. The results would be confusing at best and inequitable at worst.

There is no question that the various price disclosures and other provisions of the Rule are worthwhile and help consumers to make informed decisions. The ICFA has in fact incorporated many of these concepts into its Code of Ethics as a condition for membership in the Association. The ICFA also works with the Better Business Bureau, state consumer protection agencies, and related organizations to informally resolve complaints. However, it is rare to receive a complaint involving a Funeral Rule-type violation and when it occurs, it seems to involve a religious or municipal cemetery that would be exempt from FTC coverage in any event.

The ICFA supports meaningful laws and regulations to protect consumers when making funeral and burial purchasing decisions. As you know, we recently published a series of 27 Model Guidelines for State Laws and Regulations that we submitted to the Aging Committee. However, the ICFA is concerned with burdensome new laws that do little to protect consumers but serve only to increase the cost of doing business to sellers. These types of laws are counter-productive and ultimately anti-consumer. For these reasons, we ask you to carefully consider the calls to

expand the Funeral Rule to additional sellers. Should it be determined that some form of federal regulation covering cemeteries is needed, we respectfully urge that the Funeral Rule itself is not appropriate.

AARP Surveys

Recently, AARP published a number of surveys concerning consumers' experiences with cemeteries. These surveys were provided to the Aging Committee as part of AARP's written comments. A 1999 "Funeral and Burial Planners Survey" contacted 2,600 consumers by phone but found only 358 individuals who bought cemetery lots, merchandise or services. While this survey has been publicized for finding that "one-third of the consumers were not given written price lists by the cemetery," in fact that statistic refers to only one-third of the 8 percent who said they bought cemetery property or about 3 percent of those surveyed. More importantly, since the Funeral Rule is primarily a price disclosure regulation, the AARP survey contains no allegation that cemeteries are unwilling to give consumers price information or that the prices quoted, whether written or oral, are not accurate and truthful.

Another recent AARP publication, "The Cemetery Mystery Shop Report," readily admits it is "anecdotal evidence" and "not quantitative research that allows us to generalize to other for-profit cemeteries." AARP volunteer "shoppers" visited 106 cemeteries but shopped 64 cemeteries twice, thus resulting in double counting of the results. AARP claimed that "two-thirds of all shoppers were not shown written prices" yet acknowledged elsewhere in the Report that 98 percent of the cemeteries volunteered price information on lots. Again there is no allegation that

the information provided was not truthful and accurate. Of particular interest, the Report noted that 96 percent of the shoppers left the cemeteries with all their questions answered and 87 percent felt no pressure to buy anything.

Although AARP cites these surveys to make its case that additional laws are necessary, the ICFA believes that this data proves just the opposite. These surveys show that price and product information is readily available from most cemeteries and the ease by which AARP was able to collect this material reflects the prevalent consumer-friendly environment.

Testimony of Irwin Karp

Mr. Karp raised a number of issues pointing out the inadequacies of California law circa 1990. As you know, the state of California has considerably strengthened the provisions of its funeral, burial and cremation laws in recent years and related enforcement efforts with the result that most of Mr. Karp's testimony is outdated. It is also important to note that Mr. Karp was not employed by traditional funeral homes or cemeteries - the focus of the Committee hearings - but by a company that competed with these traditional providers.

In addition, the Cremation Association of North America (CANA) has published a model law that addresses the issues discussed by Mr. Karp. First published in 1984, the CANA Model Cremation Law has recently been revised and is an excellent resource to assist the states in developing comprehensive legislation on cremation-related matters. A copy of the model law is attached.

Testimony of Darryl J. Roberts

In his testimony, Mr. Roberts seemed unaware that most of his proposed "fixes" for various concerns are already law or otherwise incorporated into the Funeral Rule and other federal and state regulations. For example, claims regarding sealer caskets and vaults are regulated through the Uniform Commercial Code's implied warranties of merchantability and fitness for intended use. At the federal level, without the Funeral Rule, the Federal Trade Commission is empowered to investigate and prosecute businesses, including funeral homes and cemeteries, for engaging in misleading and deceptive sales practices under Section 5 of the FTC Act.¹ In addition, the FTC's Cooling Off Period for Door-to-Door Sales Rule effectively counters high pressure sales tactics by providing consumers with cancellation rights for sales made in the home or away from the seller's principal office within three business days.²

The FTC also enforces a series of Guides regulating certain types of sales practices that apply to prearrangements and prepayment. For example, the Bait Advertising Guide³ protects consumers against sellers who offer a product or service as a pretext for selling them a higher priced item. The Debt Collection Guide⁴ regulates deceptive methods to obtain payment of amounts owed to businesses and is enforced in conjunction with the Fair Debt Collection Practices Act.⁵

¹ 15 U.S.C. §§ 41-58

² 16 C.F.R. § 429

³ 16 C.F.R. Part 238.

⁴ 16 C.F.R. Part 237

⁵ 15 U.S.C. § 1692

The Guide Concerning Use of the Word "Free" and Similar Representations⁶ regulates such offers including gifts, bonuses and "without charge" services. The Guides Against Deceptive Advertising of Guarantees⁷ regulate use of claims such as "Satisfaction or Your Money Back," lifetime guarantees, and the disclosure of warranty and guarantee provisions. Most importantly, the Guide Against Deceptive Pricing⁸ regulates claims of "bargains," "sale," "reductions" and similar promotional terms. This includes advertising a reduction in the seller's former price only if that earlier price is the actual, bona fide price at which the item or service was offered for sale to the public on a regular basis for a reasonably substantial time period. The majority of states regulate the trusting aspects of pre-payments and insurance-funded prearrangements are one of the most extensively regulated areas of consumer protection.⁹

Mr. Roberts takes issue with the historic policy of almost all cemeteries of using their own personnel to open and close graves for burial. In particular, he mistakenly assumes that any price increases for providing this service is due to a handful of states that have imposed the responsibility and the liability for grave openings and closings to cemeteries as a matter of law.

In fact, these states have merely codified a longstanding practice that holds the cemetery authority responsible for any damage resulting to graves, monuments, burial vaults, caskets, and human remains due to the excavation of an adjacent burial site. In the absence of this policy, it

⁶ 16 C.F.R. Part 251

⁷ 16 C.F.R. Part 239

⁸ 16 C.F.R. Part 233

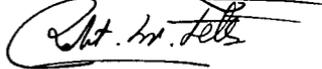
⁹ ICFA Survey of State Cemetery and Mortuary Laws and Regulations, provided in the ICFA's April 10, 2000 written testimony to the Committee.

would be difficult to determine the liability of either the cemetery or the third parties performing the openings and closings for harm suffered by families with loved ones interred in adjacent graves.

Conclusion

We compliment the Committee for providing a constructive forum to discuss funeral-related issues. The ICFA notes that none of the testimony provided by either the consumer witnesses or by representatives of consumer organizations established the existence of widespread abusive practices. However, we are concerned with the existence of any complaints and look forward to assisting the Committee in developing, in the words of Chairman Grassley, "common sense solutions."

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Robt. M. Fells", is written over a horizontal line.

Robert M. Fells
General Counsel



Cremation Association of North America MODEL CREMATION LAW AND EXPLANATION

PREAMBLE

There are many considerations that must be taken into account when a Crematory is entrusted with the disposition of human remains. The identification of the deceased, the holding of the remains for cremation, the cremation process, and the processing, packing and disposition of the cremated remains are major items of concern not only to the crematory, but also to the consuming public. High standards must be maintained during all phases of the cremation process.

When the Cremation Association of North America ("CANANA") first published its Model Cremation Law in 1984, there was an absence of comprehensive cremation legislation throughout North America. Since that time several states and some of the provinces in Canada have addressed virtually all aspects of the cremation process. Other states have dealt in part with the subject and in some instances different approaches to the issues have been developed. California, Florida, Georgia, Idaho, Illinois, Louisiana, North Carolina, Ohio and the province of British Columbia have addressed this subject in great detail and those laws are good sources for anyone contemplating enacting cremation legislation. While some progress has been made, it is still necessary for uniform statutory provisions to be developed in many states and provinces, in order that the industry can maintain the public trust expected of those involved in a vital service. It is the objective of this revised model legislation to present current statutory provisions that will assist those individuals, organizations, associations, state and

provincial authorities which attempt to enact comprehensive cremation legislation.

This original drafts of the 1984 version of the Model Legislation and this update were initially prepared by Harvey I. Lapin, of the law firm of Harvey I. Lapin & Associates, General Counsel to CANANA. Both versions were based in part on a research project of the statutory laws of the 50 states, and several Canadian Provinces and a review of current court cases involving cremation problems. These drafts were reviewed extensively by the CANANA Board. Revisions were made based on comments received from the Board during each review. In addition, CANANA has circulated drafts of this Model Legislation to other interested parties in the industry for comments and has incorporated suggestions in the final version published in August of 1999. Any references to state laws in effect as of that date should be verified prior to later use.

PART I

1

TERMINOLOGY

Introduction

The use of consistent terminology in cremation legislation is important to the industry and the public. Unfortunately, the industry uses terminology that has not been generally accepted by the public. The public, also, uses terms concerning cremation that have in some instances been popularized by the movie industry. One example is the use of the term "ashes" for the term "cremated remains". Because of

these variations, it is very important that legislation throughout the states and provinces use consistent terms and definitions. When the term "states" is used hereafter in this document it is intended to refer to "states or provinces." The following definitions have been developed by the industry to provide uniformity and consistency. Similar definitions are presently used in those states that have enacted comprehensive laws involving cremation. States may have other laws dealing with licensing funeral directors and cemeteries which may define some of the following terms in an inconsistent manner. Definitions from other laws should only be substituted when consistent with the intent to have a comprehensive law dealing with the subject of cremation.

A. Alternative Container. See the definition of "Cremation Container"

Explanation. The term "Alternative Container" is the term used in the FTC Funeral Rule. The industry believes the term "Cremation Container" is a better term for public use.

B. Authorizing Agent(s). An Authorizing Agent(s) is a person legally entitled to authorize the cremation of human remains.

C. Body parts. Limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research; or human bodies or any portion of bodies that have been donated to science for medical research purposes.

D. Burial transit permit. A permit for disposition of a dead human body as required by state legal requirements.

CANA Model Law (7/29/99)

The title of this document may vary from state to state.

E. Casket. A rigid container which is designed for the encasement of human remains, is usually constructed of wood, metal or like material and ornamented and lined with fabric, and which may or may not be combustible.

Explanation. This term has to be defined in any comprehensive legislation because it is against the federal and state law to require the use of a casket for a cremation. This definition is slightly different from the FTC Funeral Rule definition because it is being used in comprehensive cremation legislation. Most crematories will not accept metal caskets because they are not combustible or other wise suitable for cremation. If metal caskets are accepted, the crematory operator should have a ready means for their disposal. It also should be disclosed to the Authorizing Agents that the casket lid will be opened during the cremation process and that the metal casket will not be completely consumed in the process.

F. Change of ownership. A transfer of more than 50% of the stock or assets of a crematory authority.

G. Closed Container. Any container in which cremated remains can be placed and closed in a manner so as to prevent leakage or spillage of remains or the entrance of foreign material.

H. Cremated Remains. All the remains of the cremated human body recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions and may possibly include the residue of any foreign matter including casket material, bridgework or eye glasses that were cremated with the human remains. Sometimes referred to as Human Cremated Remains.

Explanation. Cremated remains are often referred to erroneously as "ashes". CANA has tried to promote the correct concept that cremated remains consist of bone fragments. In

addition, it is possible that foreign matter may be included with the cremated remains even though processing and pulverization have occurred.

I. Cremation. The technical process, using direct flame and heat, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation. Cremation includes the processing and usually includes the pulverization of the bone fragments.

Explanation. There are various technical processes used for cremation. This definition was intended to encompass them all without using any descriptive term directed to a particular process.

J. Cremation Chamber. The enclosed space within which the cremation process takes place. Cremation chambers covered by these procedures shall be used exclusively for the cremation of human remains.

Explanation. The term human remains may include tissue, limbs and fetuses. CANA, however, believes it is not a good practice to cremate surgical waste or pets in the same cremation chamber.

K. Cremation Container. The container in which the human remains are transported to the crematory and placed in the cremation chamber for a cremation. A cremation container should meet substantially all of the following standards:

- (1) Be composed of readily combustible materials suitable for cremation;
- (2) Be able to be closed in order to provide a complete covering for the human remains;
- (3) Be resistant to leakage or spillage;
- (4) Be rigid enough for handling with ease; and
- (5) Be able to provide protection for the health, safety and personal integrity of crematory personnel.

Explanation. The definition of cremation container is intended to allow for the use of any type of container which complies with a set

standard. CANA historically has been opposed to the use of certain types of containers, such as bed sheets, body bags, plastic and canvass for health safety and personal handling reasons. Some crematories will also be asked to accept the human remains on a stretcher, in a body pouch or in non-rigid containers. Because of the possibility of contagious diseases and other problems related thereto, CANA believes these practices should be discouraged.

L. Cremation interment container (Urn Vault). A rigid outer container that, subject to a cemetery's rules and regulations, is composed of concrete, steel, fiberglass, or some similar material in which an urn is placed prior to being interred in the ground, and which is designed to withstand prolonged exposure to the elements and to support the earth above the urn.

M. Crematory Authority. The legal entity or the authorized representative of the legal entity which is licensed by the Department to operate a crematory and perform cremation.

N. Crematory. The building or portion of a building that houses the cremation chamber and the holding facility.

O. Department. The state Department of Public Health or other appropriate agency that administers the law.

P. Final disposition. The burial or other disposition on a permanent basis of a dead human body, cremated remains or parts of a dead human body.

Q. Funeral director. A person known by the title of "funeral director", "funeral director and embalmer", or other similar words or titles, defined by State law and licensed by the State to practice funeral directing or funeral directing and embalming.

R. Funeral establishment. A building or separate portion of a building having a specific street address and location and devoted to activities relating to the shelter, care,

CANADA Model Law (7/29/99)

custody, and preparation of a deceased human body and which may contain facilities for funeral or wake services.

S. Holding Facility. An area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation that shall:

- (1) Comply with any applicable public health law;
- (2) Preserve the dignity of the human remains;
- (3) Recognize the integrity, health, and safety of the Crematory Authority personnel operating the crematory; and;
- (4) Be secure from access by anyone other than authorized personnel.

T. Human Remains. The body of a deceased person, or part of a body or limb that has been removed from a living person, including the body, part of body or limb in any stage of decomposition.

U. Niche. A compartment or cubicle for the memorialization or permanent placement of an urn containing cremated remains.

V. Processing. The reduction of identifiable bone fragments after the completion of the cremation process to unidentifiable bone fragments by manual means.

W. Pulverization. The reduction of identifiable bone fragments after the completion of the cremation and processing to granulated particles by manual or mechanical means.

X. Scattering Area. A designated area for the scattering of cremated remains usually in a cemetery and located on dedicated cemetery property where cremated remains, which have been removed from their container, can be mixed with, or placed on top of, the soil or ground cover or buried in an underground receptacle on a co-mingled basis.

Y. Temporary Container. A temporary container is a receptacle for cremated remains usually made of cardboard, plastic or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.

Z. Urn. A receptacle designed to permanently encase the cremated remains.

2 ESTABLISHMENT OF CREMATORY AND LICENSURE OF CREMATORY AUTHORITY

A. Any person doing business in this state, or any crematory, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity if licensed under this Act may erect, maintain and conduct a crematory in this state and provide the necessary appliances and facilities for the cremation of human remains in accordance with the provisions of this Act.

B. A Crematory Authority shall be subject to all local, State, and federal health and environmental protection requirements and shall obtain all necessary licenses and permits from the Department, the federal and state Departments of Health and Human Services, and the State and federal Environmental Protection Agencies, or such other appropriate local, State, or federal agencies.

C. A crematory may be constructed on or adjacent to any cemetery, in or adjacent to any funeral home or at any other location consistent with local zoning regulations or state laws.

D. Application for a license as a Crematory Authority shall be on forms furnished and prescribed by the Department. Applications for Crematory Authorities in existence prior to the effective date of the Law shall provide the Department with the following information:

- (1) The full name and address, both residence and business, of the applicant if the applicant is an individual; the full name and address of every member and the business if the applicant is a partnership; the full name and address of every member of the board of directors and the business if the applicant is an association; and the name and address of every officer, director, and shareholder holding more than 25%

of the corporate stock and the business if the applicant is a corporation.

- (2) A detailed statement of the Crematory Authorities assets and liabilities.

- (3) A detailed statement for each of the individuals listed in the Application under (1) above providing their business experience for the last 10 years immediately preceding the application, any felony or misdemeanor convictions or involvement in civil litigation in which fraud was an essential element of the crime or complaint and any information about a loss, or suspension of any license by this state or any other state related to the business of funeral directing, operation of a crematory or crematory.

- (4) The address and location of the crematory.

- (5) Evidence confirming the date the Crematory Authority was established.

- (6) Copies of all up to date licenses or permits required for a crematory to operate in the state.

Applications for new Crematory Authorities shall be in writing and shall contain the following:

- (1) The full name and address, both residence and business, of the applicant if the applicant is an individual; the full name and address of every member and the business if the applicant is a partnership; the full name and address of every member of the board of directors and the business if the applicant is an association; and the name and address of every officer, director, and shareholder holding more than 25% of the corporate stock and the business if the applicant is a corporation.

- (2) A detailed statement of the Crematory Authorities assets and liabilities.

- (3) A detailed statement for each of the individuals listed in the Application under (1) above providing their business experience for the last 10 years immediately preceding the application, any felony or misdemeanor convictions or

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involvement in civil litigation in which fraud was an essential element of the crime or complaint and any information about a loss or suspension of any license by this state or any other state related to the business of funeral directing, operation of a cemetery or crematory.

(4) The address and location of the proposed crematory.

(5) A description of the type of structure and equipment to be used in the operation of the crematory.

(6) Copies of all applications for and any licenses or permits issued for a crematory to operate in the state.

(7) Any further information that the Department reasonably may require.

E. Each crematory authority shall file an annual report with the Department, accompanied with a fee in the amount of \$_____

providing any changes required in the information provided under Subsection D or indicating that no changes have occurred. The annual report shall be filed by a crematory authority on or before March 15 of each calendar year, in the Office of the Department. If the fiscal year of a crematory authority is other than on a calendar year basis, then the crematory authority shall file the report required by this Section within 75 days after the end of its fiscal year. The Department shall, for good cause shown, grant an extension for the filing of the annual report upon the written request of the crematory authority. An extension shall not exceed 60 days. The Department may grant additional 60 day extensions in good cause. If a crematory authority fails to submit an annual report to the Department within the time specified in this Section, the Department shall impose upon the crematory authority a penalty of \$_____ for each and every day the crematory authority remains delinquent in submitting the annual report.

F. All records relating to the registration and annual report of the crematory authority required to be filed under this Section shall be

subject to inspection by the Department upon reasonable notice. **Explanation.** It is not intended by CANA that any new requirements be established for crematories already established. Such operations should be allowed to obtain a license without being subject to any new requirements unless there is reason to believe they are violating the laws or are dangerous to the public.

G. No person, cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity shall cremate any human remains, except in a crematory licensed for this express purpose and under the limitations provided in this Act.

3

AUTHORIZING AGENT

A. The following persons, in the priority listed, shall have the right to serve as an authorizing agent:

(1) Any person acting on the instructions of a decedent who authorized his or her own cremation through the execution, on a pre-need basis, of a cremation authorization form which specifically states that no changes can be made by survivors as set out in Subsection 12 (B) (1) of this Law, unless the authorization specifically provides for a designated survivor to alter the arrangements under Subsection 12 (B) (2) of this Law and the designated survivor has contacted the crematory authority and expressed the desire to alter the arrangements. The actions of such a designated survivor, however, shall not prevent another individual, who has a priority right superior to that of the designated survivor according to this Section, from authorizing the cremation of the decedent by executing a new cremation authorization form.

(2) Any person serving as executor or legal representative of a decedent's estate and acting according to the decedent's written instructions.

(3) The individual who was the spouse of the decedent at the time of

the decedent's death.

(4) The decedent's surviving adult children. If there is more than one adult child, any adult child, who confirms in writing the notification of all other adult children, may serve as the authorizing agent, unless the crematory authority receives a written objection to the cremation from another adult child.

(5) The decedent's surviving parent. If the decedent is survived by two parents, a parent who confirms in writing the notification of the other parent may serve as the authorizing agent, unless the crematory authority receives a written objection to the cremation from the other parent.

(6) The person in the next degree of kinship under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may serve as the authorizing agent.

(7) In the case of indigents or any other individuals whose final disposition is the responsibility of the State or any of its instrumentality's, a public administrator, medical examiner, coroner, State appointed guardian, or any other public official charged with arranging the final disposition of the decedent may serve as the authorizing agent.

(8) In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or other private institution, who have executed pre-need cremation authorization forms and the institution is charged with making arrangements for the final disposition of the decedent, a representative of the institution may serve as the authorizing agent.

(9) In the absence of any person under paragraphs (1) through (8), any person willing to assume the responsibility as authorizing agent, as specified in this Act.

B. In the case of body parts, a representative of the institution that has arranged with the crematory authority to cremate the body parts may serve as the authorizing agent, providing that the person whose body

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parts are being cremated or an authorized agent has previously approved the cremation of the body parts.

C. No person may serve or shall be allowed to serve as an authorizing agent when a decedent has left written instructions in a will or other document provided by law that they do not wish to be cremated.

4 AUTHORIZATION TO CREMATE

A. Except as otherwise provided in this section, a Crematory Authority shall not cremate human remains until it has received:

(1) A cremation authorization form signed by an authorizing agent. The cremation authorization form shall be provided by the crematory authority and shall contain, at a minimum, the following information:

(a) The identity of the human remains and the time and date of death.

(b) The name of the funeral director or funeral establishment that obtained the cremation authorization.

(c) Notification as to whether the death occurred from a disease declared by the Department of Health to be infectious, contagious, communicable, or dangerous to the public health.

(d) The name of the authorizing agent and the relationship between the authorizing agent and the decedent.

(e) A representation that the authorizing agent does in fact have the right to authorize the cremation of the decedent, and that the authorizing agent is not aware of any living person who has a superior or equal priority right to that of the authorizing agent. In the event there is another living person who has a superior or equal priority right to the authorizing agent, the form shall contain a representation that the authorizing agent has made all reasonable efforts to contact that person, has been unable to do so, and has no reason to believe that the person would object to the cremation

of the decedent.

(f) Authorization for the crematory authority to cremate the human remains.

(g) A representation that the human remains do not contain a pacemaker or any other material or implant that may be potentially hazardous or cause damage to the cremation chamber or the person performing the cremation.

(h) The name of the person authorized to receive the cremated remains from the crematory authority.

(i) The manner in which final disposition of the cremated remains is to take place, if known. If the cremation authorization form does not specify a method of final disposition provided for in Section 8 of this Act, then the form may indicate that the cremated remains will be held by the crematory authority for 30 days before they are released, unless they are picked up from the crematory authority prior to that time, in person, by the authorizing agent. At the end of the 30 days the crematory authority may return the cremated remains to the authorizing agent if no final disposition arrangements are made; or at the end of 60 days the crematory authority may dispose of the cremated remains in accordance with disposition provisions of this Law.

(j) A listing of any items of value to be delivered to the crematory authority along with the human remains, and instructions as to how the items should be handled.

(k) A specific statement as to whether the authorizing agent has made arrangements for any type of viewing of the decedent before cremation, or for a service with the decedent present before cremation in connection with the cremation, and if so, the date and time of the viewing or service and whether the crematory authority is authorized to proceed with the cremation upon receipt of the human remains.

(l) The signature of the authorizing agent, attesting to the accuracy of all representations contained on the

cremation authorization form.

(m) If a cremation authorization form is being executed on a pre-need basis, the cremation authorization form shall contain the disclosures required by the Pre-need provisions of this Law in Section 8.

(n) The cremation authorization form, other than pre-need cremation forms, shall also be signed by a funeral director or other representative of the funeral establishment that obtained the cremation authorization. That individual shall merely execute the cremation authorization form as a witness and shall not be responsible for any of the representations made by the authorizing agent, unless the individual has actual knowledge to the contrary. The information requested by items (a), (b), (c) and (g) of this Subsection, however, shall be considered to be representations of the authorizing agent and may be the representations of the funeral director or funeral establishment. In addition, the funeral director or funeral establishment shall warrant to the crematory that the human remains delivered to the crematory authority have been positively identified as the decedent listed on the cremation authorization form by the authorizing agent or a designated representative of the authorizing agent. Such identification shall be made in person or by photograph by the authorizing agent or designated representative of the authorizing agent.

(2) A completed and executed burial transit permit, as provided in (laws of state), indicating that the human remains are to be cremated, and

(3) Any other documentation required by the state, any county or municipality.

B. If an Authorizing Agent is not available to execute the cremation authorization form, that person may delegate that authority to another person in writing, including a facsimile transmission, telegam, or other electronic transmission.

A written delegation of authority of

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an authorizing agent must include:

(1) the name, address, and relationship of the authorizing agent to the decedent; and

(2) the name and address of the person to whom authority is delegated and that:

(a) The person authorized under this section may serve as the authorizing agent and execute the cremation authorization form.

(b) The crematory authority is not liable for relying on a cremation authorization form executed in compliance with this section.

C. A Crematory Authority shall not accept unidentified human remains. If the Crematory Authority takes custody of a cremation container subsequent to the human remains being placed within it, the Crematory Authority can rely on the identification made before the body was placed in the cremation container. The Crematory Authority shall place appropriate identification upon the exterior of the cremation container based on the prior identification.

Explanation. The majority of complaints filed in court proceedings against funeral directors, funeral establishments and crematory authorities concerning cremation involve the misidentification of human remains. It is very important that a Crematory Authority not be required to accept unidentified human remains. The burden of a misidentification of the human remains should be on the authorizing agent.

D. Upon completion of the cremation, the Crematory Authority shall file the Burial Transit Permit with the Department, pursuant to the laws of the state.

5

RECORDKEEPING

A. The crematory authority shall furnish to the person who delivers human remains to the crematory authority a receipt signed by both the crematory authority and the person who delivers the human remains, showing the date and time of the

delivery, the type of casket or alternative container that was delivered, the name of the person from whom the human remains were received and the name of the funeral establishment or other entity with whom the person is affiliated, the name of the person who received the human remains on behalf of the crematory authority, and the name of the decedent. The crematory shall retain a copy of this receipt in its permanent records.

B. Upon its release of cremated remains, the crematory authority shall furnish to the person who receives the cremated remains from the crematory authority a receipt signed by both the crematory authority and the person who receives the cremated remains, showing the date and time of the release, the name of the person to whom the cremated remains were released and, if applicable, the name of the funeral establishment, cemetery, or other entity with whom the person is affiliated, the name of the person who released the cremated remains on behalf of the crematory authority, and the name of the decedent. The receipt shall also contain a representation from the person receiving the cremated remains confirming that the cremated remains will not be used for any improper or indecent purpose. The crematory shall retain a copy of this receipt in its permanent records.

C. A crematory authority shall maintain at its place of business a permanent record of each cremation that took place at its facility which shall contain the name of the decedent, the date of the cremation, the final disposition of the cremated remains and any other document required by this law.

D. The crematory authority shall maintain a record of all cremated remains disposed of by the crematory authority in accordance with this Law.

E. Upon completion of the cremation, the crematory authority shall file the burial transit permit as required by law, and transmit a photocopy of the burial transit permit

along with the cremated remains to whoever receives the cremated remains from the authorizing agent unless the cremated remains are to be interred, entombed, inurned, or placed in a scattering area, in which case the crematory authority shall retain a copy of the burial transit permit and shall send the permit, along with the cremated remains, to the cemetery, which shall file the permit with the designated agency after the interment, entombment, inurnment, or scattering has taken place.

F. All cemeteries shall maintain a record of all cremated remains that are disposed of on their property, provided that the cremated remains were properly transferred to the cemetery and the cemetery issued a receipt acknowledging the transfer of the cremated remains.

6

CREMATION CONTAINERS

A. Except as provided in Subsection B, no Crematory Authority shall make or enforce any rules requiring that human remains be placed in a casket before cremation or that human remains be cremated in a casket, nor shall the crematory refuse to accept human remains for cremation for the reason that they are not in a casket.

B. Human remains must be delivered to a crematory in a cremation container. Human remains shall not be removed from the cremation container and the cremation container shall be cremated with the human remains, unless the Crematory Authority has been provided with written instructions to the contrary by the Authorizing Agent.

7

CREMATION PROCEDURES

A. Human remains shall not be cremated within 48 hours after the time of death, as indicated on the regular medical certificate of death, or the coroner's certificate. In the

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event such death comes under the authority of the coroner or medical examiner, the human remains shall not be received by the Crematory Authority until authorization to cremate has been received in writing from the coroner or medical examiner of the county in which the death occurred. In the event the Crematory Authority is also authorized to perform funerals as well as perform cremation, this restriction on the receipt of human remains shall not be applicable. In no instance shall the lapse of time between the death and any cremation be less than 48 hours, unless such death was a result of an infectious, contagious or communicable and dangerous disease, and such time requirement is waived in writing by the medical examiner where the death occurred.

Explanation. Cremation is an irreversible process and occasionally it may be necessary for legal reasons to delay a cremation in order for legal authorities to examine a body or for proper identification. Accordingly, all cremation should be delayed for a reasonable period to allow time for the legal authorities to act. The time selected in this section was the result of a survey of state laws on the subject. It is recognized that some states may have longer or shorter periods already set out in their laws.

B. No body shall be cremated with a pacemaker or other potentially hazardous implant in place. The Authorizing Agent for the cremation of the human remains shall be responsible for informing the funeral director about a pacemaker or other potentially hazardous implant. The Authorizing Agent shall be ultimately responsible to ensure that any pacemakers or hazardous implants are removed prior to cremation.

C. A Crematory Authority shall hold human remains, prior to their cremation, according to the following provisions of this Subsection:

(1) Whenever a Crematory Authority is unable to cremate the human remains immediately upon taking custody thereof, the Crematory Authority shall place the human

remains in a refrigeration facility at 40 degrees Fahrenheit or less, unless the human remains have been embalmed.

(2) A Crematory Authority shall not be required to accept for holding a cremation container from which there is any evidence of leakage of the body fluids from the human remains therein.

D. No unauthorized person shall be permitted in the crematory area while any human remains are in the crematory area awaiting cremation, being cremated or being removed from the cremation chamber.

E. The unauthorized, simultaneous cremation of the human remains of more than one adult person within the same cremation chamber is not allowed or usually possible, but it will never be performed even if possible; unless the Crematory Authority shall have received specific written authorization to do so from all Authorizing Agents for the human remains to be so cremated. The simultaneous cremation of the human remains of one adult and one or more children will not be performed unless the Crematory Authority shall have received specific written authorization to do so from all Authorizing Agents for the human remains to be so cremated. A written authorization shall exempt the Crematory Authority from all liability for commingling of the product during the cremation process.

F. Immediately prior to being placed within the cremation chamber, the identification of the human remains, as indicated on the cremation container, shall be verified by the Crematory Authority and the identification shall be removed from the cremation container and placed near the cremation chamber control panel where it shall remain in place until the cremation process is complete.

G. Upon completion of the cremation, and in so far as is possible, all of the recoverable residue of the cremation process shall be removed from the cremation chamber. Insofar as possible, all residual of the

cremation process shall then be separate from anything other than bone fragments and then be processed so as to reduce them to an unidentifiable particle. Anything other than the particles shall be removed from the cremated residuals as far as possible and shall be disposed of by the Crematory Authority.

H. Cremated remains shall be packed according to the following provisions of this Subsection:

(1) The cremated remains with proper identification shall be placed in a temporary container or urn. The temporary container or urn contents shall be packed in clean packing materials and not be contaminated with any other object, unless specific authorization has been received from the Authorizing Agent or as provided in Subsection (2) of this part. A temporary container shall contain a label disclosing that the temporary container shall not be used for permanent storage of the cremated remains in a niche, crypt, cremation interment container or interment space.

(2) The cremated remains with proper identification, shall be placed within the temporary container or urn ordered by the Authorizing Agent.

(3) If the cremated remains will not fit within the dimensions of a temporary container or urn the remainder of the cremated remains shall be returned to the Authorizing Agent or its representative in a separate container attached together with the first container or urn with both being marked as being together.

(4) When a temporary container is used to return the cremated remains, that container shall be placed in a suitable box and all box seams taped closed to increase the security and integrity of that container. The outside of the container shall be clearly identified with the name of the deceased person whose cremated remains are contained therein, the name of the Crematory Authority and an indication the container is a temporary container.

(5) If the cremated remains are to

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be shipped, the temporary container or designated receptacle ordered by the Authorizing Agent shall be packed securely in a suitable, sturdy and pressure resistant container which is not fragile and is sealed properly. Cremated remains shall be shipped only by a method which has an internal tracing system available and which provides a receipt signed by the person accepting delivery.

8
DISPOSITION OF CREMATED
REMAINS

A. The Authorizing Agent shall be required to provide the person with whom cremation arrangements are made with a signed statement specifying the ultimate disposition of the cremated remains, if known. A copy of this statement shall be retained by the Crematory Authority.

B. The Authorizing Agent is responsible for the disposition of the Cremated Remains. If, after a period of 60 days from the date of cremation, the Authorizing Agent or his representative has not specified the ultimate disposition or claimed the cremated remains, the Crematory Authority or the person in possession of the cremated remains may dispose of the cremated remains in any manner permitted by law, except scattering. The Authorizing Agent shall be responsible for reimbursing the Crematory Authority for all reasonable expenses incurred in disposing of the cremated remains pursuant to this section. A record of such disposition shall be made and kept by the person making such disposition. Upon disposing of cremated remains in accordance with such section, the Crematory Authority or person in possession of the cremated remains shall be discharged from any legal obligation or liability concerning such cremated remains. This provision shall apply to all cremated remains currently in the possession of a Crematory Authority or other party.

Explanation. It has been the experience of many CANA members

that Authorizing Agents do not always make arrangements for the disposition of cremated remains. Accordingly, it is CANA's position that the Crematory Authority should have the authority to dispose of the cremated remains in accordance with the law, except for scattering in a manner where the remains would not be recoverable. The time period for this disposition is left open to the state authorities to establish.

C. In addition to disposing of cremated remains in a crypt, niche, grave or scattering garden located in a dedicated cemetery, or by scattering over uninhabited public land, the sea or other public waterways pursuant to Subsection F, cremated remains may be disposed of in any manner on the private property of a consenting owner, upon direction of the Authorizing Agent. If cremated remains are to be disposed of on private property, other than dedicated cemetery property, the Authorizing Agent shall provide the Crematory Authority, with the written consent of the property owner.

Explanation. At the time the original CANA Model Law was proposed, there was extensive litigation in the State of California related to the subject of disposition of cremated remains. Prior to the filing of those lawsuits, California has allowed cremated remains to be dispersed over public lands as well as in the sea outside of certain limits. Some of the litigation involve a claim against an air delivery service that cremated remains were improperly placed on a vacant lot rather than dispersed in the public areas as requested. Because of that litigation, the State of California restricted scattering of this type. Accordingly, this provision was drafted in a manner consistent with those changes. Subsequently, the California legislature reviewed the area again and made some changes. During 1997, another California air delivery service was discovered with over 5,000 cremated remains that had not been scattered in accordance with contractual

obligations. A lawsuit was filed and the California legislature changed the laws to be consistent with this section of the Model Act. CANA believes, however, it is proper to scatter over uninhabited public land, as long as permission is obtained from any agency required and the environmental rules are followed. Accordingly CANA adopted that position on this scattering method. Because cremated remains are bone fragments, CANA does not advocate scattering on private property. However, if it is decided to permit it then at a minimum, the written consent of the property owner should be obtained.

D. Except with the express written permission of the Authorizing Agent no person shall:

(1) Dispose of or scatter cremated remains in such a manner or in such a location that the cremated remains are commingled with those of another person. The provisions of this paragraph shall not apply to the scattering of cremated remains at sea or by air from individual closed containers or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for such purposes.

(2) Place cremated remains of more than one person in the same closed container. This paragraph shall not apply to placing the cremated remains of members of the same family in a common closed container designed for the cremated remains of more than one person.

E. Cremated remains shall be delivered by the Crematory Authority to the individual specified by the Authorizing Agent on the cremation authorization form. The representative of the Crematory Authority and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased, and the date, time and place of the receipt, and the other information set out in Section 5 B of this law. The Crematory Authority shall retain a copy of the receipt. After this delivery, the cremated remains may be transported in any

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manner in this state, without a permit, and disposed of in accordance with the provisions of this Act.

F. Cremated remains may be scattered over uninhabited public land, a public waterway or sea, subject to health and environmental standards, or on the private property of a consenting owner pursuant to Subsection C, if they are reduced to a particle size of one-eighth inch or less. A person may utilize a boat or airplane to perform such scattering. Cremated remains shall be removed from their closed container before they are scattered. Any person who scatters such human remains, pursuant to this Section, shall file with the local registrar of births and deaths, in the county nearest the point where the cremated remains are to be scattered, a verified statement containing the name of the deceased person, the time and place of death, the place at which the cremated remains are to be scattered, and any other information that the local registrar of births and deaths may require. If cremated remains are to be scattered pursuant to this section, the Crematory Authority shall not release the cremated remains to the Authorizing Agent or his designated representative until the Crematory Authority has been provided with a receipt indicating that the proper filing has been made with the local registrar of births and deaths.

Explanation. In some states, many people select to scatter the cremated remains in other appropriate places. The selection sets out the requirement for such a disposition. Scattering over uninhabited public land has been eliminated from this section as previously explained. The Georgia legislature enacted a more specific law on the subject. This law can be found in the Georgia statutes at section 31-21-4, which provides as follows:

Burial at sea of cremated remains; notification that cremated remains are ready for interment; unclaimed cremated remains.

(a) (1) Cremated remains may be

taken by boat from any harbor in this state, or by air, for burial at sea at a point not less than three miles from the nearest shoreline. Cremated remains shall be removed from their container before such remains are buried at sea.

(2) Any person who buries at sea, either from a boat or from the air, any human cremated remains shall carry out the burial services within 50 days from the reduction of the body to cremated remains and file with the local registrar of births, deaths, and other vital records in the county nearest the point where the remains were buried a verified statement containing the name of the deceased person, the time and place of death, the place at which the cremated remains were buried, and any other information that the local registrar may require. Burial services may be delayed until weather conditions improve if inclement weather prevents safe burial.

(b) Any person who requests that a dead body be cremated shall provide the funeral establishment or other person responsible for the cremation an address at which such person can be notified when the cremated remains are ready for interment. Notification shall be made by first-class mail to such person at the address provided. If the cremated remains are not claimed for interment or other disposition within 80 days from the date that the notification is mailed, such remains shall be turned over to the coroner, medical examiner or other appropriate state agency to be interred in a plot or niche in a cemetery where indigents are buried.

9

LIMITATION OF LIABILITY

A. Any person signing a cremation authorization form as an authorizing agent shall be deemed to warrant the truthfulness of any facts set forth in the cremation authorization form, including the identity of the deceased whose remains are sought to be cremated and that person's authority

to order such cremation. Any person signing a cremation authorization form as an authorizing agent shall be personally and individually liable for all damage occasioned thereby and resulting therefrom. A Crematory Authority and a funeral director may rely upon the representations of the authorizing agent in the cremation authorization form.

B. A funeral director shall have the authority to arrange the cremation of human remains upon the receipt of a cremation authorization form signed by an authorizing agent. A Crematory Authority shall have authority to cremate human remains upon the receipt of a cremation authorization form signed by an Authorizing Agent. There shall be no liability for a funeral director or Crematory Authority that pursuant to such authorization arranges a cremation, cremates human remains pursuant to such authorization, or that releases or disposes of the cremated remains pursuant to such authorization.

C. A Crematory Authority shall not be responsible or liable for any valuables delivered to the Crematory Authority with human remains.

D. A funeral director that refuses to arrange a cremation and a Crematory Authority that refused to accept a body or to perform a cremation shall not be liable for refusing to accept a body or to perform a cremation until they receive a court order or other suitable confirmation that a dispute has been settled if:

(1) They are aware of any dispute concerning the cremation of human remains,

(2) They have a reasonable basis for questioning any of the representations made by the Authorizing Agent, or

(3) For any other lawful reason.

E. If a funeral director or Crematory Authority is aware of any dispute concerning the release or disposition of the cremated remains, the funeral director or Crematory Authority may refuse to release the cremated remains until the dispute has been resolved or the funeral director or Crematory Authority has

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been provided with a court order authorizing the release or disposition of the cremated remains. Funeral directors and Crematory Authorities shall not be liable for refusing to release or dispose of cremated remains in accordance with this Subsection.

Explanation. The Limitation of Liability section is the most important part of any comprehensive cremation law. Normally state legislatures are hesitant to limit liability. However, the section is usually enacted when it is explained that a crematory authority and funeral director are acting on representations of the authorizing agents and it is necessary that liability be limited, if the cremation is to be performed on the basis of those representations.

10 PACEMAKERS

If an authorizing agent informs the funeral director and the cremation authority of the presence of a pacemaker in the human remains, then the funeral director shall also be responsible for ensuring that all necessary steps have been taken to remove the pacemaker before delivering the human remains to the crematory. Should the funeral director who delivers the human remains to the crematory fail to ensure that the pacemaker has been removed from the human remains prior to delivery, and should the human remains be cremated with the pacemaker, then the funeral director who delivered the human remains to the crematory shall also be liable for all resulting damages along with the Authorizing Agent.

11 ADMINISTRATION

A. The Department may adopt, promulgate, amend and repeal such reasonable regulations as may be consistent with this Act governing the cremation of human remains. Such regulation specifically shall include

the conditions under which human remains of persons dying from an infectious, contagious, communicable or dangerous disease can be transported from any portion of the state to a crematory for the purpose of cremation, and minimum standards of sanitation, required equipment and fire protection for all crematories which the Department may deem necessary for the protection of the public.

B. A Crematory Authority may enact reasonable rules and regulations, not inconsistent with this Act, for the management and operation of a crematory, the types of cremation containers it will accept, authorization forms required, witnesses to a cremation and similar provisions. Nothing in this provision shall prevent a Crematory Authority from enacting rules and regulations which are more stringent than the provision contained in this Act.

C. Violations of this Act shall be punishable as follows:

(1) Maintenance or operation of a building or structure within this state as a crematory in violation of the provisions of this Act or the rules and regulations of the Department adopted pursuant thereto is hereby declared to be a public nuisance and may be abated as such as provided by law.

(2) Holding oneself out to the public as a Crematory Authority without being licensed under this Act, or performing a cremation without a cremation authorization form signed by an Authorizing Agent is hereby declared to be a _____ punishable by _____.

(3) Signing a cremation authorization form with the actual knowledge that the form contains false or incorrect information is hereby declared to be a _____ punishable by _____.

(4) A violation of any other provision of this Act is hereby declared to be a _____ punishable by _____.

12 PRE-NEED CREMATION ARRANGEMENTS

A. Any pre-need contract sold by, or pre-need arrangements made with, a crematory authority, cemetery, funeral establishment or any other party, that includes a cremation, shall specify the ultimate disposition of the cremated remains, if known and that portion of the agreement shall be initiated by the individual making the arrangements. In the event no additional or different instructions are provided to the funeral director or Crematory Authority by the Authorizing Agent at the time of death, the funeral director and Crematory Authority shall be authorized to release or dispose of the cremated remains as indicated in the pre-need agreement. Upon compliance with the terms of that pre-need agreement, the funeral director and Crematory Authority shall be released from any liability concerning the disposition of the cremated remains.

B. (1) Any person, or anyone who has legal authority to act on behalf of a person, on a pre-need basis, may authorize his or her own cremation and the final disposition of his or her cremated remains by executing, as the authorizing agent, a cremation authorization form on a pre-need basis. A copy of this form shall be provided to the person. Any person shall have the right to transfer or cancel this authorization at any time prior to death by destroying the executed cremation authorization form and providing written notice to the crematory authority.

(2) Any cremation authorization form that is being executed by an individual as his or her own authorizing agent on a pre-need basis shall contain the following disclosure, which shall be completed by the authorizing agent:

() I do not wish to allow any of my survivors the option of canceling my cremation and selecting alternative arrangements; regardless of whether my survivors deem a change to be appropriate.

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() I wish to allow only the survivors whom I have designated below the option of canceling my cremation and selecting alternative arrangements, if they deem a change to be appropriate.

(3) Except as provided in Subsection (2) of this Section, at the time of the death of a person who has executed, as the authorizing agent, a cremation authorization form on a pre-need basis, any person in possession of an executed form and any person charged with making arrangements for the final disposition of the decedent who has knowledge of the existence of an executed form, shall use their best efforts to ensure that the decedent is cremated and that the final disposition of the cremated remains is in accordance with the instructions contained on the cremation authorization form. If a crematory authority (i) is in possession of a completed cremation authorization form that was executed on a pre-need basis, (ii) is in possession of the designated human remains, and (iii) has received payment for the cremation of the human remains and the final disposition of the cremated remains or is otherwise assured of payment, then the crematory authority shall be required to cremate the human remains and dispose of the cremated remains according to the instructions contained on the cremation authorization form, and may do so without any liability unless the authorizing agent has selected the option under Section 12 B (2) that allows a designated survivor to select alternative arrangements. If the survivor has not selected alternative arrangements at the time of death or within 48 hours thereof, the funeral director and crematory authority may proceed with the cremation without any liability.

Explanation. This section is intended to allow an individual to provide the legal authorization for their own cremation. There is a substantial group, who feel that if the wishes of the survivors are contrary and cremation would be

objectionable, the cremation should not occur even if so authorized. The provision suggested above is based on Section 85 of the Illinois Crematory Regulation Act, 410 ILCS 18/1 et seq. This section provides an option for the person making the pre-need arrangement to limit the survivors' rights to change the arrangement. Another factor is that many state laws presently do not clearly provide for the legal effect of a pre-need arrangement and there is serious concern about such an authorization even where there is no dispute. CANA's board feels that these should be covered in a law so that the matter will be clear. The Florida legislature addressed the problem of the liability of a party acting on the wishes of a decedent in Section 732.804 of the Florida Statutes as follows:

Provisions relating to cremation

The fact that cremation occurred pursuant to a provision of a will or any written contract signed by the decedent in which he or she expressed the intent that his or her body be cremated is a complete defense to a cause of action against the personal representative or person providing the services.

13

MISCELLANEOUS

A. This Act shall be construed and interpreted as a comprehensive cremation statute, and the provisions of this Act shall take precedence over any existing laws that govern dead human bodies and human remains that do not specifically address cremation. This Act shall be effective on _____, 20_____.

B. A Crematory Authority shall be permitted to employ a licensed funeral director for the purpose of arranging cremations with the general public, transporting human remains to the crematory, and processing all necessary paperwork. No aspect of this provision shall be construed to require a licensed funeral director to perform any functions not otherwise

required by law to be performed by a licensed funeral director.

Robert K. Phelps

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Manassas, VA 20112-0143
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April 10, 2000

Dear Senator Grassley;

Today you held hearings into shady and deceptive practices in the funeral industry. I ask that a copy of this letter be placed in the hearing transcript so my experiences can also be put on the public record.

When my beloved wife died from a heart-attack, this was while I was in the bathroom getting her some medicine. Therefore, I did not have the opportunity to say "goodbye," and "I love you," for the final time. When I noted my wife was not breathing, I called 911 for an ambulance and began CPR procedures. When the ambulance arrived, they took one look at my wife and called for the medical examiner to come pick up the body. They did not even unpack their equipment, and returned to the fire station to wait for the next call. There were also two police officers who came in with the ambulance crew. Their investigation confirmed that the death was due to natural causes.

I made the mistake of getting in the hands of a crooked funeral director who was an expert at manipulating grieving relatives. Since I was in no condition to make sound business decisions, I paid about double the usual cost for the casket, funeral service, and other add-ons that were not needed for a simple, low-cost, yet dignified funeral.

Fortunately, I had a banker who understood what I was going through, so I was able to borrow the money to pay the funeral expenses. It took me several years to pay back this loan.

On the day of the funeral, while the family was gathered to view the body before going to the church service, the funeral director took me aside and revealed his most nasty surprise. He claimed the cemetery workers would not dig the grave, unless I came up with \$2,000 in cash. This raised the possibility of the funeral party going to the cemetery and finding no place to bury the corpse. Just imagine how devastating this would be to the grieving family and friends.

I had to leave the funeral party for a quick drive to the bank. The banker authorized the withdrawal of the \$2,000 in cash, so I drove back to the funeral home to put the money into the greedy little hands of the funeral director. He then, presumably called the cemetery and told them to dig the grave. I now realize this was a scam to get the first \$2,000 of the funeral cost in cash money. The grave was already dug, lined with the grass mats, flowers, etc. This also gave the funeral director a large sum of money he could use to line his pockets, instead of crediting it to the funeral costs.

I caught up with the funeral party again at the church, just as the service was beginning. Probably some of the relatives wondered why I came in late, instead of taking my place in the front pew at the start of the funeral. After the funeral, came the drive to the cemetery and the grave-side service. I was so emotionally devastated, that my brother had to pick me up, turn me around and start me walking toward the limousine.

Since I paid way too much for my wife's funeral, I decided that when my time comes to die, I want a simple cremation and burial at the Quantico National Cemetery, since I am a veteran with an honorable discharge.

I even have my own coffin. I bought this as a kit with pre-cut pieces from the Saah company that makes unfinished furniture. The kit contains the pre-cut and pre-drilled wooden panels and a bag of screws and instruction sheet. This kit costs about 1/3 the cost of the cheapest manufactured coffin in the funeral homes.

This coffin makes a handy storage chest, until time to put it to its final use. I have simply varnished each panel before assembly to preserve the wood. Also, I have made a special modification to allow it to be used as an escape effect in my stage show. This is one secret I will quite literally take to my grave.

When Harry Houdini died, his collection of magic books, posters, etc. was donated to the Library of Congress. I found the secret of the escape coffin in one of the unpublished manuscripts. Therefore this a secret shared by only myself and Harry Houdini. His escape coffin was used for his funeral, just as mine will be for my funeral and burial.

While I was making plans for my own funeral, I got roped into a deal where I could pay all the funeral costs in advance. In return for the membership fee, the Association would pick up my body and coffin, do the cremation and then rent a boat so my ashes could be scattered over the Atlantic Ocean. The money I paid has vanished down a black hole somewhere. The Association was one man operating the business off his kitchen table. He has died, or skipped town with thousands of dollars in his pocket, so the certificate entitling me to cremation and burial at sea is a worthless scrap of paper with fancy printing.

Basically, I want a quiet, simple funeral. As a veteran, it is my understanding that the VA will pay all the funeral costs. Since my coffin is basically a pine box, it and my corpse will be burned to ashes, and there will be only a few screws and other hardware that can be removed with a strong magnet. Then, the ashes can be take to the Quantico National Cemetery for burial.

Sincerely,

Robert K. Phelps

HARRIET KAROL
2486 WALDEMAR ST.
THOUSAND OAKS, CA 91361

Att: Senator Grassley,

4-10-2000
ph: 1-805-379-3404

On April 30, 1999 my husband Harold
Karol - of 24 yrs. died of cancer. He was
ill for seven months. It was a terrible day.

That day I chose a gravesite at
Mt. Sinai Memorial Park
5950 Forest Lawn Dr.

Los Angeles, Ca. 90068

(Arnold R. Salzman, General Mgr.)

(John Freear - salesperson

I also chose a plot ^{next} to his.

This year I was 76 yrs. old - last
year my husband was 72.

The plot I chose was on top of a hill
with an unobstructed view. That is
not what I got.

A few days later (at the service) I
felt uneasy.

On Oct. 19, 1999 I chose a tablet
with an inscription for his gravesite.

At that time I went to place flowers,
on the gravesite - but couldn't find it.

II

A working man I hailed helped me & found it - not where I chose the plot but down-hill near a curb (unmarked) & next to a large brass screw. There was also some dark statuary overlooking it. I disliked - a most undesirable location. This would be hard to sell.

I can't describe how terrible I felt. I was angry and felt I had been taken advantage of. I did not go to the office. I went home to think about all this.

Suggestions -

- 1 - All curbs and areas must be clearly marked with R.D. not just after they're sold out.
- 2 - Everyone must receive a map for identification with the salesperson's & your signatures.
- 3 - The salesperson must lose his job & be blacklisted & pay 5,000.⁰⁰ fine for this sham.
- 4 - Arnold R. Salzman - General Mgr. should be fined 10,000.⁰⁰ for each incident.
- 5 - All cks. must be returned in 4 wks. a 500.⁰⁰ late charge otherwise (Mine were 6 wks).

III

6- A standard fee should be set to ex-
hume the body - 400.⁰⁰ the most. I paid
900.⁰⁰. (I chose to move my husband. He
had worked hard all his life and was a
saver. His money goes to cancer research.)

To this day I become very upset about
this event. I cannot dismiss it.

I thank you so much for
your time and effort - please help!

With sincere appreciation.

Grandmother Harriet Harold - 76.

P.S. I objected to the \$900.00 charge because
they made the errors - they tried to blame it
on me! Also I paid more for 2 plots
elsewhere and they should pay the
difference.

What is all this anguish worth?

I will never, ever forget this happening.

It still breaks my heart.

Thank you for your compassion, H.T.,
and concern.

FUNERAL: High-pressure tactics

Continued from A1

often targeted for funeral services and products, they disproportionately fall victim to high-pressure tactics from unscrupulous salesmen, Grassley said.

Karp said there are no licensing requirements for people who sell prepaid funeral plans and handle the trust funds set up to pay for the funeral once someone

dies.

There is not even any educational requirement, he said.

"We have people that haven't graduated high school," he said.

Karp said there is ample opportunity for abuse of funeral trust funds — which is why he is in prison — and fraudulent sales pitches are common.

For instance, no one tells people that if they die someplace far from where the funeral policy was made, funeral costs could increase anywhere from \$500 to \$2,000 — and that is not covered in the prepaid policy.

"This is very rarely mentioned in the sales contracts," Karp said.

Karp's testimony was followed by personal accounts from people who said they had been cheated by funeral homes and cemetery caretakers, in addition to consumer advocates such as AARP.

Danell Pepson of Leesburg, Va., testified that her grandmother's remains leaked out of her casket in an above-ground mausoleum in Pennsylvania. She was

never told of the problem, while the remains leaked over the course of a year. She found out later that the caretakers illegally disinterred her grandmother to put absorption powder in the mausoleum and casket.

Tom Moore of Santa Fe Springs, Calif., testified to learn that a cemetery where most of her family was buried nearly shut down amid news reports that undertakers had put bodies in mass graves to make way for new grave sites. Moore ultimately took over the cemetery as a non-profit venture after long court battles.

The committee hearing will continue today with testimony from officials in the funeral industry. They issued a press release Monday declaring the hearing is skewed against them.

"The committee has asked almost every detractor of funeral service and memorial rituals to enter their critical and often inaccurate perspective into the official record," said a statement by Robert Harden, executive director of the National Funeral Directors Association, and Jay Jacobson, president-elect of the Iowa Funeral Directors Association.

"This raises serious questions as to whether the committee is interested in an objective, in-depth study of funeral service consumer issues or whether this is simply another example of political showmanship in Washington."

— Jennifer Maddox's e-mail address is Maddox@shhs.com.

4-11-2000 Thousand Oaks Star News Jailed crook warns of funeral frauds

SENATE HEARING:
Convicted man says
getting wrong ashes
not that unusual.

By Jennifer Maddox
Scripts Howard News Service

WASHINGTON — A California man imprisoned for raiding prepaid funeral trust funds to cover his business expenses told senators through a video link Monday that consumers should be wary of people like him.

"If you have someone cremated, for example, you can't be sure that the ashes you get are those of your loved one," said Irwin Karp, who pleaded guilty in December to 16 counts of grand theft and is serving six years in state prison.

"This is not that unusual, because there is a tremendous

amount of sloppiness" in the industry, Karp, 62, said.

Karp was ordered to pay \$73,000 to 70 seniors in Ventura County for his crimes. He was the first witness to testify in a two-day hearing of the Senate Committee on Aging that will examine practices in the funeral and burial industry.

"Some consumers have been cheated outright. Others have simply paid too much money for a funeral and burial," Committee Chairman Chuck Grassley, R-Iowa, said.

"Consumers rarely shop around and compare prices. They're grieving. They're emotional, and they put their trust in the funeral industry."

That's why the industry is so ripe for abuse, experts say. And because seniors over 65 are most

Please see FUNERAL on A6

Senate Special Committee on Aging
 Senator Chuck Grassley
 Room 631 Dirksen Building
 Washington DC 20510

Senator John Breaux

Wd 12 Ap 00
 Fernwick & Irene Carlile
 85 So. Union Bl.--G171
 Lakewood CO 80228-2207

Subject: Your C-SPAN covered Funeral Industry Practices Hearing.

Good Sirs,

On 11 Ap, on C-SPAN, I watched the first day for 7 'injured' witnesses, & Wd 12 the rebuttal by representatives of the funeral industry. As you suggested, we wish to add our experiences to your record.

Feb/87, Irene's Mother's [Ethel] Husband died. Ethel made preparations for her cremation with a local funeral home in Paradise CA. Summer '82, we were present when Ethel verified these plans at the mortuary; Ethel's ashes to be buried in her husband's grave. Spring '85, Ethel died, and we paid in full all the costs at the mortuary. Spring '87, Irene received a letter from that mortuary, asking instructions about Ethel's ashes, contrary to the signed, paid for instructions. Irene restated the instructions from her copy. We had to pay \$85. additional because the cemetery had adopted a new fee during this two year limbo. Ethel's ashes were buried two weeks later, per a long time friend of ours as witness. Our letter to the California Funeral Board [CA has a Board for every occupation.] was provided a useless response.

My Father made preparations with Neptune Society for cremation, thinking he had paid, and showed me an acknowledgement receipt. When he died Ap '95, Neptune required \$750. more, for dropping of ashes at sea. You'll recall Neptune as adversely referenced. I now have no confidence about the ultimate disposition of these ashes, said to be often commingled in the Hearing.

My Mother wanted her ashes 'nicked' with those of her Mother, Marysville CA. We were present with my Mother when this instruction was verified, signed and paid, Summer '89. This paperwork disclosed another's ashes in the location she thought she had reserved. The instruction was made good after some heated, emotional conversation, not where Mom had wanted, near other friends. When Mom died in New Jersey, Ja '94, having moved to live with my Sister, the trip for her ashes to California required over two months, and *no one at either end*, knew the location of those ashes for 2 months, though many phone calls were made. There was no continuity of identity.

Irene rented a show casket for Ethel's funeral, seeing no benefit in immediately burning an expensive wood box. This is a credit to that director. I hope this is a commonly offered practice.

The Hearing speakers referred to a Funeral Rule. I'd never heard of it. I would prefer that 'law' would mandate the submission of a list to the buyers, at the beginning of each meeting, of requirements imposed by state or federal law upon the funeral and undertaking industries, and the buyers of their products, clearly showing the obligations of seller and purchaser.

This establishes the rules of conduct. The various experienced witnesses you invited know better than I what these should be. Visitors shopping for price should be given this printed information, plus a blank / unsigned copy of the rules. When something is purchased, buyer and agent should sign and retain a copy of the rules, with a copy to the state, for very long term retention.

I do not demean the FTC, but I hope I never have to rely on this agency for enforcement assistance in an effort to gain any 'rights' guaranteed to me by any law or regulation. I have the overbearing impression that I must have a specialty lawyer beside me at any mortuary in order to obtain what-over 'rights' any law is said to provide me, as at a house closing, though I've not been grief stricken and had the disadvantage of weeping relatives at a closing.

Carile, Wd 12 Ap 00, pg2

I doubt any Republican Congress will ever 'side' with those of us who can't provide a large bribe at election and later, plus hire lobbyists. Recall the priest's and CA official's comments. I assume both would provide your committee with documentation, considering the aggressiveness of allegation.

At issue is the commonly held basis that government ought *first*, 'Do for people that which they can't do for themselves'. My thinking is certainly not radical nor extreme when I suggest this above concept be morally leveraged against the political clout of the funeral and cemetery industries.

People like myself cannot possibly compete with the PAC of an industry of 14,000 individual businesses determined to buy law, supported by the Supreme Court, intended to benefit themselves in commerce and court to the legal disadvantage of a grief-stricken family. One anguished spouse?

I saw no other Senators at your hearing, in particular mine. Yet I am more favorably impressed by your actions [I understand you have held other hearings on matters affecting people my age—72.] than any other hearing I've watched. I think both of you are as deliberately even handed as I've ever seen, including city, county, and state legislature meetings in Colorado. I hope your constituents keep you in office for as long as you choose. I'll write Campbell and Allard separately. My thanks to both of you. Keep Well!

Fernwick Carile

Deena Carile

3336 Loreto Dr.
San Ramon, CA 94583

April 12, 2000

Ms. Lauren Fuller
Mr. Cecil Swamdoss
Senate Committee on Aging
Washington, DC

Dear Ms. Fuller and Mr. Swamdoss:

At the suggestion of Kristi Tillman, I am writing to share a catastrophic experience my family had with the funeral industry in the state of California.

In 1997, my sister and I became aware that the cremated remains of our mother who passed away in January, 1992, were possibly among those found in two storage locations rented by Allan Vieira in Contra Costa County, California. Mr. Vieira was a human cremains disposer registered with the California Cemetery Board and California Board of Funeral Directors and Embalmers (1987-1996) and the California Department of Consumer Affairs (1996-1997). During this 10 year period, Mr. Vieira was contacted by hundreds of funeral homes to perform human cremains scatterings.

In February 1992, I received a signed form from Mr. Vieira stating that my mother's ashes had been "respectfully scattered" three miles west of the Golden Gate Bridge as we had requested. The knowledge that our mother's cremains had actually been discarded in a storage locker and hidden away for five years by the man our funeral home had hired to perform the scattering was beyond our comprehension. The immense pain and suffering at the realization that mother had never reached her final resting place cannot be described. And, as if this despicable act was not enough to deal with, the knowledge of how her cremains were handled by the crematory would cause an anguish from which we may never recover. One evening during a news broadcast, video was shown of the inside of one of the storage locations. Along with the piles and piles of marked boxes were stacks of paper and plastic bags. Many of these paper bags were torn and falling apart, clearly showing human cremains spilling from them. Then the shock! I noticed that several bags bore the label of the crematory that had performed our mother's cremation. I could not believe what I was seeing! On top of everything else, we now had to face the possibility that our mother's ashes could possibly be in one of those bags. The only way to be sure was to call the crematory, ask the question and hope for an honest answer. I'll never forget the crematory receptionist's words as she retrieved our mother's information from her computer, "I'm sorry for what happened to your mother, yes, her remains were placed in a paper bag and given to Mr. Vieira." When we asked why a paper bag, the response she gave was, "Because that's the way Mr. Vieira requested to receive them." There are no words that can explain the hurt and pain my sister and I felt at that moment and continue to feel today. Even now as I write this, it is hard to control the anger that I feel toward all of those that I blame for letting this happen:

1. Allan Vieira who contracted to perform a job that he clearly stopped doing years before the discovery.
2. The crematory violated our contract by placing our mother's cremains into a paper bag. It is unclear whether they even inserted an identification disk into the bag or marked the outside of the bag for identification, since after three attempts to identify all of the unmarked bags, 144 sets remained unidentified, our mother's among them. Had our mother's cremains been placed into the sealed container we paid for, our chances of having her ashes returned to us would have greatly increased.
3. The funeral home. When we went to Wilson & Kratzer Mortuary to make our arrangements, the funeral director did not refer us to the yellow pages to find a crematory and cremains disposer. He already had that work subcontracted out. In fact, Wilson & Kratzer Mortuary and Rolling Hills Crematory are owned by the same company, Carriage Services, Inc. Sending us to Rolling Hills Crematory and using Allan Vieira was a part of their 'one stop' service.

4. The California Cemetery Board and the California Board of Funeral Directors and Embalmers. They apparently did not check or care that he was not properly accredited to perform this job. There apparently were no guidelines they followed in their hiring practices. It is evident that any responsibility to assure that Allan Vieira was doing his job properly ended as soon as he handed them his yearly fee.
5. The Department of Consumer Affairs (DCA). In 1996, the California Cemetery Board and the California Funeral Directors and Embalmers Board were combined into the Cemetery and Funeral Programs under the jurisdiction of the Department of Consumer Affairs. Unfortunately, in 1996 and again in 1997, Mr. Vieira was registered without benefit of proper accreditation.

The final nail was hammered into the coffin (if you'll excuse the pun) when we discovered that our right to due process was non-existent. One would think that having this information would allow us to file suit against the crematory and the funeral home. It wasn't just for our pain and suffering, but mainly to hold accountable those individuals and businesses that defiled our mother's body and her right to a dignified disposal. Unfortunately, the deep pockets of the funeral industry have succeeded in passing and upholding in California Appellate Court Proposition 51 which, in essence, exculpates the funeral director in particular and the funeral home in general from their role as a general contractor. Likewise, it also protects the crematory from litigation. So, once again, the funeral industry has gotten away with a heinous crime and the victims are once again victimized. Our California court system provides no recourse for accountability. Even though the crematory violated our contract by placing our mother's remains in a paper bag rather than the contracted container, as long as Proposition 51 remains on the books, they are protected. While I believe that not all funeral directors or crematories set out to cut corners or break the law, I also have to believe that while Proposition 51 stands, there will be those who will continue to manipulate, deceive, and defraud their customers knowing that they are beyond the reach of the law. There is something very wrong with a court system that allows this to happen.

Realizing that winning a court case alone would not change the phlegmatic laws that were currently governing the funeral industry in California, we decided attack the problem at its core by making changes to the state's Business and Professions Code dealing with cremated human remains disposal. Our efforts did not go smoothly at first, as we were unable to find a state representative who would back our legislation. We went to Sacramento and handed out packets to each Senator and Assemblyman asking for their help. We even contacted our U.S. Senators Boxer and Feinstein for assistance and much to my dismay were referred back to our state legislators. After months of trying, our persistence paid off at the office of State Senator Jackie Speier. Working alongside funeral industry representatives and G.V. Ayers, Chief of the Department of Consumer Affairs Cemetery and Funeral Board, we drafted AB 2279 (attached).

While Mr. Ayers' statement to the committee on April 11th painted a factual picture that the consolidation of the California Cemetery Board and the California Board of Funeral Directors and Embalmers into a single board under the direction of the Department of Consumer Affairs has smoothed out some of the rough spots, I don't think California should be viewed as a role model for funeral industry reform. There are still many areas within our Business and Professions Code that could use an overhaul, particularly in regards to the accountability of funeral homes, directors and crematories. This, however, will be a tougher fight since the funeral industry has very powerful lobbyists and our elected officials seem reluctant to take them on. Maybe this is where federal assistance by virtue of new rules and guidelines will help. I hope that the work begun with AB 2279 will continue to bring about improved funeral industry legislation for the benefit of all California consumers. Thank you again for allowing me to share my story with you.

Respectfully,


Catherine E. Morris

BILL NUMBER: AB 2279 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 5, 2000

INTRODUCED BY Assembly Member Dutra

FEBRUARY 24, 2000

An act to amend Sections 9741, 9742, 9744, and 9744.5 of, and to add Section 9740.5 to, the Business and Professions Code, and to add Section 7054.61 to the Health and Safety Code, relating to cremated human remains disposal.

LEGISLATIVE COUNSEL'S DIGEST

AB 2279, as amended, Dutra. Cemeteries: cremated remains: licensing.

Existing law provides for the Cemetery Program, administered by the Department of Consumer Affairs, under which funeral professions are licensed and regulated.

This bill would require the department to provide specified funeral-related entities with a notice containing information on cremated remains disposal. This bill would require specified funeral-related entities that recommend, refer, or arrange the services of a registered cremated remains disposer to provide the notice to the individual controlling the disposition of the remains, as defined. This bill would provide that any funeral establishment, crematory, or cemetery that offers cremated remains disposal services is not required to provide the notice.

Existing law requires a cremated remains disposer to provide specified information when registering with the program. The information includes business address and service area.

This bill would require the cremated remains disposer to include in that information the Airman's Medical Certificate and copy of the current pilot's ~~or captain's~~ license.

Existing law requires aircraft and boats used for scattering cremated remains to be registered or certified with the appropriate government agency.

This bill would require the cremated remains disposer to provide the department with an annual aircraft inspection certificate. This bill would also require the department to post specified information about cremated remains disposers on its website and toll-free telephone number.

Existing law requires each cremated remains disposer to store cremated remains in a place free from exposure to the elements and be responsibly maintained until disposal.

This bill would also require that the remains be kept in a durable container.

Existing law requires each cremated remains disposer to provide a copy of the permit for disposition of human remains to the person authorizing the scattering of the remains within 60 days of the scattering.

This bill would require the cremated remains disposer to provide a copy of the permit and a copy of the current pilot's or captain's license to the funeral director and the person authorizing the scattering within 10 business days of the scattering.

This bill would also require the cremated remains disposer to

provide the person authorizing the scattering, and the funeral establishment, crematory, or cemetery, with a signed declaration containing specified information and stating under penalty of perjury that the scattering was performed.

By expanding the definition of the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 9740.5 is added to the Business and Professions Code, to read:

9740.5. (a) The department shall provide any funeral establishment, crematory, cemetery, or other entity that recommends, refers, or arranges the services of a registered cremated remains disposer pursuant to Section 9740, a notice containing, but not limited to, all of the following information:

(1) Information about permissible scattering and current registration status of registered cremated remains disposers can be obtained by contacting the Department of Consumer Affairs' toll-free telephone number or Internet website.

(2) A registered cremated remains disposer is not required to scatter cremated human remains in this state.

(3) Registered cremated remains disposer services cannot be guaranteed.

(4) Registered cremated remains disposers are not typically representatives or agents of funeral establishments, crematories, or cemeteries and are solely responsible for compliance with all applicable laws and regulations and for the disposition of the cremated human remains released to their custody.

(b) Any funeral establishment, crematory, cemetery, or other entity that recommends, refers, or arranges the services of a registered cremated remains disposer pursuant to Section 9740, shall provide the person with the right to control the disposition of the remains pursuant to Section 7100 of the Health and Safety Code, with the notice in subdivision (a).

(c) Nothing in this section shall prohibit the department from including this information in the declaration required pursuant to Section 7685.2.

(d) This section shall not apply to any funeral establishment, crematory, or cemetery that provides cremated remains disposal services.

SEC. 2. Section 9741 of the Business and Professions Code is amended to read:

9741. (a) (1) Registration shall be on the form prescribed by the program and shall include, but not be limited to, the full name of the registrant, business and residence addresses, description and identification of aircraft or boats which may be used in dispensing cremated human remains, and the area to be served. Each registration application shall be accompanied by the cremated remains disposer

fee.

(2) Each registrant who dispenses human remains by air shall include copies of the registrant's current Airman's Medical Certificate as required by Section 67 of Title 14 of the Code of Federal Regulations and the registrant's current pilot's license.

~~(3) Each registrant who dispenses human remains by boat shall include a copy of the registrant's current captain's license.~~

(b) Every registered cremated remains disposer who dispenses human remains by air shall post a copy of his or her current pilot's license, and the address of the cremated remains storage area at his or her place of business. Every registered cremated remains disposer who dispenses human remains by boat shall post a copy of his or her current boating license and the address of the cremated remains storage area at his or her place of business.

SEC. 3. Section 9742 of the Business and Professions Code is amended to read:

9742. (a) All aircraft used for the scattering of cremated human remains shall be validly certified by the Federal Aviation Administration. All boats or vessels used for the scattering of cremated human remains shall be registered with the Department of Motor Vehicles or documented by a Federal agency, as appropriate. The certification or registration shall be available for inspection by the program.

(b) Every cremated remains disposer shall provide the department with a copy of the proof of the annual inspection required by Section 43 of Title 14 of the Code of Federal Regulations for all aircraft used in scattering cremated human remains.

(c) The department shall post on its Internet website and provide on its toll-free telephone number, information about permissible scattering and licensed cremated remains disposers including, but not limited to, the current status of a pilot's or captain's license and inspections for aircraft or boats used for scattering.

SEC. 4. Section 9744 of the Business and Professions Code is amended to read:

9744. Each cremated remains disposer shall provide the person authorizing the scattering of the cremated human remains and the funeral director, or the individual acting as the funeral director, with both of the following:

~~(1)~~
(a) A copy of the completed permit for disposition of human remains pursuant to Chapter 8 (commencing with Section 103050) of Part 1 of Division 102 of the Health and Safety Code within 10 business days of the date of the scattering.

~~(2)~~
(b) A copy of the cremated remains disposer's current pilot's or captain's license.

SEC. 5. Section 9744.5 of the Business and Professions Code is amended to read:

9744.5. (a) Every cremated remains disposer shall do all of the following:

(1) Dispose of cremated remains within 60 days of the receipt of those remains, unless a written signed reason for a delay is presented to the person with the right to control the disposition of the remains under Section 7100 of the Health and Safety Code.

(2) (A) Provide the Cemetery Program with the address and phone number of any storage facility being used by the registrant to store cremated remains.

(B) Cremated remains shall be kept in a durable container and stored in a place free from exposure to the elements, and

shall be responsibly maintained until disposal.

(C) The Cemetery Program and its representatives shall conduct, on an annual basis, random inspections of the operations of 5 to 10 percent of the registered cremated remains disposers, and is authorized to inspect any place used by a cremated remains disposer for the storage of cremated remains without notice to the cremated remains disposer.

(3) Provide the person authorizing the scattering, and the funeral establishment, crematory, or cemetery, with a signed declaration stating under the penalty of perjury that the scattering was performed at the stated date, time, and place.

(b) A violation of the requirements of this section is grounds for disciplinary action.

SEC. 6. Section 7054.61 is added to the Health and Safety Code, to read:

7054.61. When cremated remains are removed from the place of cremation or interment for scattering by a registered cremated remains disposer pursuant to Section 9740.5 of the Business and Professions Code, the cremated remains shall be in a durable container.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Statement by Cindy Briggs
4/2/00
re: Assembly Bill 2279

Page 1

This statement is being made in regard to the horrible ordeal inflicted upon my family by one man's malice and the California funeral industry's negligence.

I had the unfortunate of circumstance to arrange funerals for both my brother in January of 1989, and my father in June of 1996. I used the same Funeral Home for both occasions, choosing what I thought to be a reputable establishment. As per their wishes, my brother and father were cremated, and their ashes were to be scattered at sea.

Then, in June of 1997, a story broke about a pilot named Al Vieira. He had contracted with over 250 Funeral Homes and Crematoriums throughout California to scatter ashes but instead, for some ungodly reason, he stockpiled more than five thousand human remains in storage facilities and in his airplane hanger. This man had lost his medical certificate to fly in 1984. And we are not sure how long he was doing his job at all. The funeral industry had never checked his credentials. If one of the funeral homes or crematoriums had checked on this man, one time, a lot of families could have been saved a lot of suffering.

After the story broke it was impossible to get any information from the funeral home I used. I turned to the Contra Costa County Sheriffs Department and District Attorneys Office for information.

Identification took months due to the poor condition of the boxes, urns etc. Some remains had even been placed in paper bags. Many boxes were broken open and unlabeled. After months of waiting, my father's ashes were recovered but my brother's were not. As we learned more about this case I was infuriated to find that this man had taken over for a pilot by the name of B.J. Eldin who, in the early 80's, had dumped over five thousand human remains on private land.

The funeral industry in California was more than aware there was a problem in this area, but did not care enough to put any guidelines into place to keep this from happening again. If they had cared enough about their consumers after the first incident, I would not be writing this statement today.

Soon after this story came to light, a large class action suit was filed. My family chose to pursue an independent lawsuit against the funeral home we used. Then we were further victimized by the funeral industries legal representatives in this case. A non-opt clause put into the class action suit took away my family's and other families' rights to pursue legal action on their own.

|| Statement by Cindy Briggs
4/2/00
re: Assembly Bill 2279

Page 2

At this point I decided to be a victim no more. I took my cause to the media. I went to TV stations, newspapers, magazines, and anyone who would listen. And some did. My story was reported by the San Francisco Chronicle, Sacramento Bee, Contra Costa Times, and the Fresno Bee. It also appeared on most of the local television and radio stations. As my story drew attention I was contacted by more families. We banded together picketing funeral homes and attorneys involved in the case. Due partly to our diligence and a fair judge, the non-opt clause was thrown out and we were free to pursue our cases. This is not an easy industry to go up against and subsequently my family's settlement with the funeral home was a joke to say the least.

|| After our story became public we decided to pursue the legislators in this state to prevent this tragedy from happening to anyone else. We began to approach local assemblyman and state senators. We contacted both Senator Boxer's and Feinstein's offices, and the governor, to no avail. Then in June of 1999, a meeting was set up in Senator Jackie Spiers office with G.V. Ayers, the head of the Department of Consumer Affairs Funeral and Crematory Board, George Prather, a representative of the California Funeral Directors Association, and Terry McHale, a lobbyist for the funeral industry.

|| While Cathy Morals and myself were in the meeting, other families handed out forty packets to each state senator explaining our ordeal and asking for help to introduce legislation. We received only one response. The legislators in this state have been totally unresponsive.

After a lot of hard work and perseverance we have received backing. Assembly Bill 2279 will be voted on in April 2000. By putting guidelines into place, such a tragedy as this will hopefully never happen again.

In conclusion, the families in this case have found no justice in either their own individual suits or the class action suit. The attorneys in this case will walk away with millions, and the laws in this state protect the funeral industry, not the consumer.

My family and I will spend the rest of our lives wondering what happened to the remains of my brother. This whole ordeal has traumatized us horribly. My father and brother were wonderful people who deserved better, and the legislation that is pending is the only justice that my family and thousands of others will receive.

If funeral homes are going to portray themselves as one stop shops they need to be held accountable to the people they contract with. After all, they are a multi-billion dollar industry with all the resources in the world available to them. It should not take legislation to make this industry legitimate.

Columbia transportation service
p. o. box 1121
Columbia, MS 39429
Chris and Lisa Cook

April 19, 2000

Honorable Chuck Grassley - Committee Chairperson
Senate Special Committee on Aging
G31 Dirksen Senate Office Building
Washington, DC 20510

Dear Committee Members:

My wife and I understand that you are investigating improprieties and the lack of regulation which exists in the funeral industry. We have a story for you. Even now, it is hard to write, but it needs to be told. We have tried to put our personal feelings aside in the hopes that by writing this we may be helping to lay the groundwork for changes that may keep some other family from going through what we went through. And so we tell you Jennifer's Story.

On July 10, 1998, our beloved daughter, Jennifer Cook, was a passenger in a van headed for Colorado. The van was driven by Jennifer's birth mother, Maudra Munster. For reasons which are still unclear, Maudra Munster lost control of the van on Interstate 40 near Tucuman, New Mexico. It went into the median and rolled over several times. Jennifer was thrown from the van and killed. She was only thirteen years old. Maudra's husband was also thrown from the van and killed. Our other teenaged daughter, Christen, also a passenger in the van, was seriously injured. She was airlifted to a hospital in Amarillo, Texas.

Immediately upon learning of the accident, Elizabeth and I made arrangements to travel to Amarillo to check on Christen, and then to travel on to Tucumcari, New Mexico, where our Jennifer's body had been taken. In advance of the trip itself, we called the Tucumcari funeral home to make clear our wishes concerning our daughter. Perhaps I don't need to explain to the Committee that for a parent, there is nothing worse, nothing harder in life, than the sudden death of your child. Jennifer was our youngest child; our baby. Need I say more? Although my wife, Elizabeth, is Jennifer's step-mother, she was Jennifer's mother-in-fact for twelve of her thirteen short years, and was as close to Jennifer as any mother can be. We both desperately wanted to see Jennifer again, and so did her many shocked and anguished friends and other family members.

So we made it clear to the funeral home director in Tucumcari in our first telephone call that we wanted Jennifer's remains embalmed and shipped promptly to the funeral home in Crowley, Louisiana. The Tucumcari funeral home director's name is Charles Dunn. He owns and operates a funeral home by the same name in Tucumcari. He also serves as the County Coroner for Quay County, New Mexico. Small wonder our daughter's body ended up at his funeral home, but I digress. We made it clear to Mr. Dunn that we wanted these arrangements made because we wished to have an open casket funeral so we and all who knew Jennifer could see her one last time to say goodbye to this beautiful person who had been so suddenly and horribly jerked from our lives. Mr. Dunn assured us that these arrangements would be no problem.

In the company of our minister we first traveled to Amarillo to see our other daughter, Christen, in the hospital there. The next day, a Sunday, we went on over to Tucumcari for

the grim task of identifying Jennifer. Our little girl was still in a body bag when we were allowed in to see her that day. She had not been cleaned up in any way. Mr. Dunn told us that she had been embalmed already and that he would soon be making the shipping arrangements. We made the journey back home to Mississippi to finalize the funeral arrangements and await Jennifer's arrival.

Jennifer was not shipped to us in Mississippi for more than five days. Her body finally arrived in Baton Rouge, Louisiana on July 15th, 1998, more than five days after the accident. Mr. Dunn's excuse was that he could not get Jennifer on a flight out of Albuquerque any earlier than that time.

Mr. Anthony Istre of Geesey-Ferguson Funeral Home in Crowley, Louisiana picked up Jennifer's remains at the Baton Rouge airport that day and transported her to our funeral director, Don Smith, at the Columbia Funeral Home here in Columbia, Mississippi. Both of these men are career funeral directors with years of experience in the business. They told us that the condition of Jennifer's body was such that an open casket service was out of the question. They told us that it did not appear that Jennifer's body had been embalmed, or embalmed properly if any attempt had been made at all. We were unable to say our farewells to Jennifer in the way we had planned.

Later, after we had healed enough to think about what had not been done in New Mexico, Elizabeth managed to speak again with Mr. Dunn on the telephone. At first he was nice and friendly, but when she asked him point blank why Jennifer's body had not been embalmed, he turned nasty and said in a very rude and uncaring manner: "I was too damn busy to fool

with her. It has been close to a year, why do you and Mr. Cook even care." Then he hung up. That was our last contact with MR. Dunn. In previous conversations with Mr. Dunn he had magnanimously offered not to charge us anything for his "embalming services".

We have since learned that the Dunn funeral home does not have refrigeration capabilities. We have also learned that New Mexico law and regulation requires embalming or refrigeration within twenty-four hours of death. Mr. Dunn filled out the required state form saying Jennifer had been embalmed between midnight and 3:00 a.m. on Friday, July 10 through Saturday, July 11, 1998 (the morning after the day of the accident). Aside from the fact that our funeral directors tell us that is untrue, they also tell us that if we saw Jennifer in a body bag on Sunday, just as she was after the accident, then she was certainly not embalmed at that time. We are informed that that is simply not the practice in the industry anywhere.

Beyond the generalities we have read of in the newspapers and on the internet, we are unsure of exactly what your Committee's goals and purposes are, but we are certain of one thing: our poor daughter's body was not treated with the dignity and respect that she had earned by her life amongst us, and by the way she had touched the lives of others during her short time on this earth. The things that were not done for Jennifer go beyond mere broken promises. They hurt us in our hearts and in our souls, at a time when we had precious little room left for any more suffering. They made a situation which was already undurable, unimaginably appalling as well. Quite simply, Mr. Dunn and his funeral home robbed Jennifer of her dignity in death. He took from us the only thing we had left to look forward to with Jennifer: the bleak but still consoling prospect of saying goodbye to her in the way

we had chosen, and in the way we had banked our desperate grief against. In a civilized society, both the living and the dead deserve better than that. And so we put aside the pain and the grief we still feel to tell you Jennifer's story in the hope that maybe it will turn out that she did not die for nothing along that lonesome stretch of desert highway. It would be some consolation to us, and to Jennifer as well we think, to believe that her story might spur changes that would save some other family from the double blow of grief and suffering that we were dealt. Thank you for taking the time to read Jennifer's story.



NATIONAL FUNERAL DIRECTORS & MORTICIANS ASSOCIATION, INC.

Office of the Education Commissioner, Dr. Edith Churchman

P.O. Box 3057, Newark, NJ 07103 Telephone (973) 242-8454 Fax (973) 242-2566

April 4, 2000

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Senator Charles Grassley
Chair, Senate Committee on Aging
Washington, DC

By fax (202) 224-8660

Dear Senator Grassley:

Attached you will find a statement from the National Funeral Directors and Morticians Association for inclusion in the record of your upcoming hearings on the funeral-related industries investigation.

While we applaud you for your efforts in attempting to determine improper funeral related practices, we must again state our displeasure with not being a part of these hearings. We understand the impact of the written word, but we also understand the impact and the immediacy of oral presentations. We fear that because of our exclusion from your hearings, we as an organization will not have the opportunity to respond in immediacy to comments, both positive and negative, from others that may testify. We further feel that the concerns of the market segment we serve are not being well served by our exclusion from your hearings.

Should you require any further information or clarification on any issues, please do not hesitate to contact me.

Sincerely,

Edith C. Churchman, Ph.D.

NATIONAL HEADQUARTERS

3951 Snappinger Parkway, Suite 570, Decatur, Georgia 30035 Telephone (404) 286-6680 (800) 434-0958 Fax (404) 286-6573

"Leading Into The 21st Century Committed To The NFDA/MA"

Background

The National Funeral Directors and Morticians Association is a more than 75 year old Association representing primarily funeral directors of African American descent in the United States, as well as members in the Caribbean and Africa. Our Association as formed out of a need for African American funeral service professionals to have a unified voice in issues concerning our profession. At the time NFD&MA was formed many state and national funeral service organizations did not admit persons of color for membership. While our members may now belong to other funeral service associations, loyalties still remain firm in our Association with a large percentage of our membership belonging to only one national association: NFD&MA. As of 1998 (latest statistics available) there are approximately 2,600 African American owned funeral service establishments in the United States.

Funeral Activities

In the past 75 years, one of the primary goals of the NFD&MA has been to keep membership abreast of current trends in funeral service. In recent years, funeral service has been regulated by Federal organizations such as the Federal Trade Commission and OSHA. Our members must also comply with legislation in their respective states as promulgated by their state boards of mortuary science. Our members have a strong desire and a vested interest in complying with all regulations pertaining to funeral service. Recently NFD&MA has participated in the Federal Trade Commission's Funeral Rule hearing in Washington, DC. We are now preparing ourselves for testimony in May for OSHA's proposed Ergonomic Standard. If there are amendments or changes in laws, we are affected directly as practitioners of mortuary science.

We are in favor of increased outreach programming by Federal agencies such as the FTC and OSHA to ensure compliance with Federal regulations by all funeral service establishments in the United States. We also favor a strong education of the consumer by Federal agencies so that consumers get detailed, pertinent information that will help them make informed choices.

Our membership has a strong desire to strengthen existing funeral service rules so that they apply to all suppliers of funeral goods service. Since the original Federal Trade Commission Funeral Rule was promulgated, there has been an influx of third party providers in the funeral service arena. Our membership feels it is to the benefit of the consumer to make the Funeral Rule apply to all who sell funeral goods and merchandise such as cemeteries and casket stores in order to protect the consumer.

The African American funeral service professional is very sensitive to our consumer market place and the families we serve. When price is a consideration, we price accordingly rather than accepting a national standard of funeral costs. The main concerns of funeral consumers and funeral advocates seem to center around issues of pricing. Since members of NFD&MA are mainly owners/operators, we are in a position to offer

discounted or low cost services when warranted. Our eye is not always on the bottom-line.

Burial/Cemetery Practices

As the committee may know, there is no standardized national mechanism for the regulation of cemeteries. States must rely on State Cemetery Boards to police activities of cemeteries. In some states these Boards have no control over privately owned or religious cemeteries. In many cases the consumer does not know that they can lodge complaints against the cemetery directly, as families will do funeral services through cemetery complaints. This practice may account for the low number of complaints against cemeteries that were raised at the October 1977 FTC Funeral Rule hearings. We urge the Committee on Aging to consider ways that the cemetery industry can be policed. Some interventions that could be employed would be:

- mandatory price list distribution with cemetery prices clearly indicated and given to consumers prior to purchase of cemetery property
- strengthening the Funeral Rule by including cemeteries

Preneed Sales Activities

States vary in their approach to preneed laws. The NFD&MA would be in favor of looking at states with good, solid preneed laws to perhaps formulate a national model. Some items that need to be considered in preneed are:

- When does the preneed account money become irrevocable?
- What percentage of the preneed account is trusted?
- What percentage of the preneed account is lost if the consumer cancels the contract or changes funeral homes?
- Are changes allowed to the preneed contract?
- What happens if the funeral home goes out of business before fulfilling the contract?

As an organization, we reiterate our desire to strengthen any rules and regulations that offer increased protection to the consumer in regards to funeral services and funeral goods.



NATIONAL FUNERAL DIRECTORS & MORTICIANS ASSOCIATION, INC.

Office of the Education Commissioner, Dr. Edith Churchman

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March 21, 2000

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Senator Charles Grassley
Chair, Senate Committee on Aging
Washington, DC

By fax (202) 224-8668

Dear Senator Grassley:

On today I received a phone call from Ms. Lauren Fuller Chief Investigative Counsel on the Aging Committee. Ms. Fuller informed me that she had received a request from the National Funeral Directors and Morticians Association to testify at your Committee's hearings April 10-11, 2000. Ms. Fuller stated that we were not selected to testify, but that she would welcome a statement for the record. I then asked Ms. Fuller who the participants would be. She said this information would not be available until a week or so before the hearings.

Senator, the National Funeral Directors and Morticians Association feels that we have been arbitrarily excluded from your hearings. If you cannot provide a list of participants, perhaps this list has not yet been completed. If it has not been completed, why can we not be included? The National Funeral Directors and Morticians Association is a significant market place participant. Our exclusion from the hearings means that we cannot articulate our concerns, which are in many cases different from others in funeral service.

We look forward to your reconsideration of this matter, so that we may participate in your hearing of April 10-11, 2000.


Edith C. Churchman

NATIONAL HEADQUARTERS
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United States Senate

SPECIAL COMMITTEE ON AGING
 WASHINGTON, DC 20510-8400

March 23, 2000

Via Facsimile 404-296-6573

Dr. Edith C. Churchman
 National Funeral Directors & Morticians Association, Inc.
 P.O. Box 3057
 Newark, NJ 07103

Dear Dr. Churchman:

Thank you for your interest in the funeral-related industries investigation, being conducted by my Special Committee on Aging (Committee). I received your March 18 and 21, 2000, requests to testify at the hearing scheduled for April 10-11, 2000. I understand that my staff spoke with you by telephone yesterday and invited you to submit a statement for the record.

The hearing will examine funeral and cemetery issues, as well as pre-need sales. The Committee hopes to determine the extent of improper, funeral-related practices that could harm or take advantage of consumers. In addition, the purpose is to educate the American people with regard to what to expect when planning a funeral and burial. Moreover, the Committee will examine the role of state and federal oversight of the industries. I'm sure you will join me in the desire to ensure against deceptive and improper practices in these industries, wherever possible. I believe that every American should be able to negotiate funeral and burial arrangements from an educated vantage point, especially considering the emotional element at this time in their lives and the substantial at-need element of many of these purchases.

I appreciate your willingness to assist the Committee in this investigation. I would like to renew the request for a statement for the record from the National Funeral Directors & Morticians Association, Inc. As you know, congressional hearings provide for limited discussion of issues and provide for smaller panels than the workshop format recently utilized by the Federal Trade Commission in hearing from stakeholders. As a result, this hearing seeks the broadest industry view of the various issues, but does not intend to exclude any points of view. Moreover, there are many, many associations, businesses, and others with an interest in this hearing that the Committee will not be able to accommodate on the hearing panels.

I hope you will choose to provide a statement for the Committee's printed record. I can assure that a written statement for the record will be provided no less weight by the Committee than oral testimony by witnesses on the hearing panels. Again, I appreciate your willingness to participate as we address these important issues. Please do not hesitate to contact me, or Lauren Fuller of my Committee staff, at 202-224-5367.

Sincerely,


 Charles E. Grassley
 Chairman

7106 Alderney Dr.
Houston, TX 77055
(713) 680-9718
April 7, 2000

The Honorable Charles E. Grassley, Chairman
The Honorable John B. Breaux, Ranking Minority Member
Special Committee on Aging
United States Senate
Washington, D.C. 20510-6400

RE: Funerals and Burials: Protecting Consumers from Bad Practices;
Committee Hearing, April 10-11, 2000.

Dear Chairman Grassley and Ranking Member Breaux:

I submit the following comments in connection with the Special Committee on Aging's hearing on Funerals and Burials, Protecting Consumers from Bad Practices.

After reviewing the General Accounting Office ("GAO") September 1999 report on Funeral-Related Industries ("GAO Report"),¹ Chairman Grassley stated, "unscrupulous funeral providers have no incentive to comply with the Funeral Rule if they face no penalty for violating it."² Ranking Member Breaux stated, "Protections afforded by the Funeral Rule are meaningless if it is not enforced and consumers are not aware of their rights."³ In a comment to the Federal Trade Commission ("FTC") in its review of the Funeral Rule, this author wrote: "The Commission should enhance the requirements for the delivery of consumer information, enhance policing and enforcement efforts, and increase the penalties for Funeral Rule offenders."⁴

"The goal of the [FTC's] Consumer Protection Mission is to prevent fraud, deception, and unfair business practices in the marketplace."⁵ In 1997, the FTC proclaimed its "leadership as the Nation's chief consumer protection agency," and "role as the custodian of the leading consumer protection law enforcement database."⁶ The GAO, in its Report, undertook to "describe and assess the FTC's efforts to ensure compliance with the Funeral Rule."⁷ These comments concern FTC's enforcement priorities, policing methods, and the minuscule penalties collected for violations of the Funeral Rule.

I. FTC Should Focus Enforcement Priorities on Fraud and Abuse by Funeral Providers and Not Solely on Whether Price Lists Supplied

Enforcement goals not served by "core requirements" tests. The FTC prudently focuses its prosecutorial discretion. "In allocating its prosecutorial resources, the Commission considers the amount of consumer injury caused by a violation, and generally noncompliance with some provisions is less likely to cause the magnitude of consumer injury that results from

noncompliance with the core provisions of the Rule. . . . The Commission takes action . . . when evidence shows that a violation of a significant Rule requirement has occurred."⁸

Failure to deliver price lists does not cause greatest risk of injury. The FTC assumes that the extent of a funeral provider's compliance with its legal duty to provide a General Price List when a person inquires about or shops for funeral services poses the greatest risk for consumer injury. The FTC terms the legal duty to produce a General Price List as a "core requirement." "The Funeral Rule cases that raise the greatest risk of consumer injury are usually those involving violations of the core requirement that consumers receive a General Price List before specific funeral arrangements are discussed."⁹ There is no substantiation, however, that a failure to deliver price list causes the "greatest," or even a "significant" risk of consumer injury.

Fraud and deception by funeral providers cause greater consumer injuries. A failure to deliver price lists leaves the consumer without price information delivered in a proscribed format, however, the consumer still may receive equivalent price information from other delivery methods. The expected potential consumer harm from delivering incomplete pricing information is limited to inflated or above-market prices.

Fraud in connection with pre-need funeral policies. The potential injuries from fraud and deception by a pre-need or at-need funeral provider are much greater than inflated prices. For example, through fraud and deception consumers have been misled about availability of funeral benefits contracted for under prepaid funeral insurance policies, and forced to buy, for a second time, those same funeral benefits at time of need. One death - two funeral packages "sold" to the consumer. The consumer, often elderly, must buy a complete second funeral because the funeral provider, through fraud and deception, refused to honor the terms of the burial insurance policy at the time of final arrangements. All too often consumers are being forced to litigate with burial insurance companies and funeral providers to obtain contractual benefits. Some of the lawsuits filed by Louisiana consumers because of the fraudulent failure to deliver funeral benefits purchased pre-need are set forth in the letter attached as Appendix A.

FTC should assess other causes of funeral consumer injuries. Commissioner Swindle wisely observes that it would be "worthwhile to review the types of violations against which the Commission has been less prone to take action, so as to confirm that they are not likely to cause substantial consumer injury."¹⁰ The Special Commission on Aging should encourage the FTC to review unfair and deceptive trade practices in pre-need and at-need funeral transactions and reassess the extent of consumer injuries thereby.

II. Funeral Violators Found only by Virtual Reality Consumers; FTC No Longer Undertakes Enforcement Actions due to Actual Consumer Complaints

Virtual reality consumers determine enforcement actions. "During the early years after the Funeral Rule became effective, FTC's enforcement of the Rule was complaint-based."¹¹ In a new enforcement technique, the FTC initiated test-shopping sweeps of funeral homes in a single market area in 1994.¹²

Compliance and potential FTC enforcement actions have come to be based almost solely upon the findings of test shoppers--virtual reality consumers. "All enrollees in the FROP [Funeral Rule Offenders Program] are funeral providers who have, in two separate instances of test shopping, violated one or more of the core Rule provisions."¹³ Apparently, all or almost enforcement efforts are limited to "test shopped funeral providers," and no enforcement activity is based on evidence provided through consumers complaining of actual real injuries.

DNR Order? FTC Does Not Respond to actual consumer complaints of potential Funeral Rule violations. FTC sweeps identified 80 homes with potential violations during fiscal year 1998, and the FTC took action against 26.¹⁴ During that same year, the FTC opened its mail and found 58 complaints which the FTC determined involved potential violations of the Funeral Rule.¹⁵ Apparently, the FTC took no enforcement action on any complaint made by actual consumers. The complaints made by actual consumers represent events of actual harm and injury to citizen-consumers.

Intervening in individual complaints is not something the FTC does. "While we do not resolve individual consumer disputes, your complaint, comment or inquiry may help spot a pattern of law violations requiring law enforcement action. It can also help us recognize and tell people about larger trends affecting consumers."¹⁶ "Although the Commission cannot resolve individual problems for consumers, it can act against a company if it sees a pattern of possible law violations."¹⁷

FTC's pre-1994 practice of responding to actual consumer complaints, enabled the FTC to also police the Rule requirements that consumers be given an accurate accounting or statement of goods and services selected. Now, however, because its test-shoppers only shop and do not buy, the FTC is no longer able to monitor adherence to *at-purchase* Funeral Rule requirements including providing the consumer with a statement of funeral services purchased.

No consumer redress. Moreover, the lack of attention to consumer complaints means the FTC makes no effort at obtaining redress of consumer injuries by unscrupulous funeral providers. The FTC Act authorizes the FTC to bring civil actions to obtain consumer redress including but not limited to "recession or reformation of contracts, [and] the refund of money or return of property."¹⁸ In reporting data between 1987 and 1999, the FTC notes only one instance of obtaining funeral consumer redress in the funeral.¹⁹ The FTC vigorously pursues redress actions

in every other consumer market segment (e.g., Telemarketing Sales Rule, Franchise Rule, investment fraud, advance-fee loan fraud, pyramid schemes) that it regulates.²⁰ The FTC should pursue selected consumer redress actions for violations of the Funeral Rule.

Complaining is useless; thus, few complaints. There should be little question why the FTC does not receive more consumer complaints about Funeral Rule violations. The FTC does not respond to consumer complaints. Rational consumers will not file a complaint with the FTC if there is no possibility of its informed review and an appropriate response. Peggy Porter of Baton Rouge, Louisiana, made a complaint to the FTC, and she states, "The only response I got was a form letter and a copy of a brochure."²¹ She asks, "If [FTC is] unable to investigate and penalize those that do not comply with the rules, what good are the rules."²²

This author's complaint to the FTC identified five violations of the Funeral Rule committed by Mothe Funeral Home.²³ There is no indication that the FTC took any action.

FTC's manner of responses to complaints of actual injuries by actual consumers is in direct contrast with its recently expressed goal, "to respond promptly and helpfully to public inquiries, whether by telephone, mail or e-mail."²⁴ As "the Nation's chief consumer protection agency," the FTC should investigate all consumer complaints (reducing its total reliance on sweeps for case identification) and bring enforcement actions in appropriate circumstances.

III. Few Enforcement Actions; Little Chance of Penalties to Rule Violators

Ninety-nine percent ignored; the chance of a funeral provider being test-shopped during a one year period is about one percent (1%). In the four-year period, "October 1994 to September 1998, FTC test-shopped 958 funeral homes, or 4.3% of the 22,300 funeral homes in the United States"²⁵ - a rate of 1% per year. In that four-year period, no sweeps were conducted in 28 states, and in only five states were enforcement sweeps conducted in more than one metropolitan area.²⁶

Grading on a curve -- a score of 50 means you pass! Compliance measured by providing the test shopper with a price list 50% of the time or better. A funeral provider that fails to supply a price list on the first visit, but supplies the price list during a second visit is deemed to be in compliance.²⁷ The "high degree of compliance" with the requirements of the Funeral Rule, as claimed by the FTC, means only that a majority of the industry fails to provide a test shopper with a general price list less than 50% of the time.

Flunked the test? Chance for social promotion. A funeral provider scoring less than 50% compliance is deemed a potential violator. Being deemed a potential violator, however, does not mean that the FTC will take action. The GAO reports: "[I]n fiscal years 1997 and 1998, FTC did not take action in over half the instances in which funeral homes had one or more potential

Funeral Rule violations."²⁸ In fact, during that period the FTC failed to take action in 104 out of 168 findings of homes with potential violations, or 62% of the time.²⁹ The chance that the FTC acts on a flunking funeral provider is only 38%. The FTC explains its passing of violators – social promotion – as its judicious exercise of prosecutorial discretion.³⁰ But the FTC has no explanations of the reasons it gave social promotions to many funeral violators.³¹

Violator picks own punishment. If the funeral provider was among 1% test shopped, and if the funeral provider failed more than half the time to meet its "core requirements," and if the funeral provider was one of the 3 out of every 8 homes with potential violations for which the FTC determines to act . . . then, the provider may, as its own election, choose to forego any risk of civil prosecution and join the Funeral Rule Offenders Program ("FROP").

Violators prefer FROP. Although FROP is an "alternative," it is the near unanimous choice of all. Apparently, only one funeral provider refused the FROP alternative during 1998 and 1999.³² Although the FTC once indicated that "Participation in the program does not shield a home from additional FTC law-enforcement action, if warranted."³³ There is no information that the FTC has ever imposed any additional law-enforcement action upon a FROP participant.

Reduced monetary fines under FROP. Good news for funeral violators, fines are less with the FROP. "Voluntary" payments under the FROP are "generally somewhat less than the amount that would be assessed as a civil penalty."³⁴ "Because the sweeps investigations are streamlined, focusing upon only violations of the 'core' Rule provisions, the civil penalties in sweeps cases have somewhat lower (\$1000 to \$35,000) than in conventional case that entailed a more exhaustive investigation documenting a greater number and range of alleged law violations."³⁵ It is unknown how the FTC enforces "voluntary" fines which a funeral violator refuses to pay.

Industry FROP Payments for Non-Compliance Equal Only \$145,000 out of Industry Revenues of More than \$31 billion, or 0.00046%. FROP payments averaged \$145,000 between 1996 and 1998.³⁶ During 1997, almost 27,000 funeral service providers, such as funeral homes and cemeteries, had sales revenue of about \$10 billion.³⁷ In addition, the pre-need funeral market amounted to more than \$21 billion in 1996.³⁸ The total pre-need and at-need funeral market is about \$31 billion. Out of \$31 billion in funeral industry revenues, total fines of \$145,000 for Funeral Rule violations are insignificant.

Annual FROP payments by the funeral and pre-need funeral industry average only \$1 for every \$215,000 received in gross revenues. It is likely the industry spent more last year on shoe shines last year than it did for enforcement penalties. It would be reasonable to assume that the industry is more fearful of a scuffed shoe, than a possible FROP penalty.

When the FTC collected civil penalties for Funeral Rule violations, the penalties collected averaged 50% higher than the current level of \$145,000 in voluntary FROP

payments. Civil penalties collected from FTC Funeral Rule enforcement in the five-year period between 1992 and 1996 averaged more than \$225,000³⁹ - almost 50% higher than penalties collected today under the FROP.

Effective anonymity; Don't ask, don't tell. The consumer can obtain names of funeral providers enrolled in the FROP only by filing a Freedom of Information Act ("FOIA") request with the FTC.⁴⁰ FTC has not imposed upon the National Association of Funeral Directors ("NFDA") a duty to disclose information and NFDA does not provide names of enrolled funeral providers. The FTC act provides that the Commission has the power "to make public from time to time such portions of the information obtained by it hereunder as are in the public interest."⁴¹

The failure to generally provide the names of funeral providers who have elected to join the FROP deprives consumers of valuable information and is contrary to our concepts of open government. FOIA requests are not reasonable alternatives, given the short time period during which most funeral purchasing decisions are made. "Secret" FROP participation eliminates the deterrent effect of their being damage to funeral provider's professional and personal reputation as a result his violation of funeral laws.

Anonymity under the FROP is assailed by AARP and other consumer groups.⁴²

AARP opposes offering violators of the Funeral Rule an option to make a voluntary payment and retain anonymity under the FROP. . . . What remains a source of frustration is the fact that in a program designed to deter violations and reduce recidivism, the anonymity component of the program makes it impossible to gauge its success." - American Association of Retired Persons

Finding the rascals is not as effective as disclosing who they are and what they did.
- Funeral Ethics Association

[I]t is the public nature of the action taken by the agency which causes the most change in any industry's behavior. . . . As with most other industries, NACAA believe that the funeral industry will begin true policing of its own members when enforcement actions are public and consumers are aware of the lack of compliance in funeral homes in the area. - National Association of Consumer Agency Administrators

Any program that allows secrecy from the public of wrongdoing is inherently unjust to the consumer. - Karen Leonard and Bob Treuhaft on behalf of Jessica Mitford's The American Way of Death Revisited

Even an industry group, the Illinois Funeral Directors Association, has spoken out against anonymity for Funeral Rule violators. "Fines help, but disclosure puts consumers on alert." The FTC is urged to reconsider its policy of secrecy for Funeral Rule violators.

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"Privatized" enforcement by National Association of Funeral Directors. NFDA collects a fee from FROP participants for administering the program. Violators "certify completion of the FROP to NFDA."⁴³ Apparently, violators are not required to certify completion of the FROP to the FTC. There is no information on what happens to violators that enter into the FROP, but fail to complete the certification requirements, or falsely certify completion.

IV. Conclusion

The Senate Committee on Aging is asked to urge the FTC to more vigorously enforce its Funeral Rule by:

- identifying and pursuing cases of fraud, and deceptive and unfair business practices other than simple failures to provide pricing information,
- pursuing consumer complaints to the FTC which reveal potential Funeral Rule violations,
- undertaking consumer redress actions for Funeral Rule violations,
- increasing monetary penalties to a level that provides meaningful deterrent to this \$31 billion industry, and
- facilitating the distribution of information on Funeral Rule violators.

I commend the Senate Committee on Aging for its investigation and oversight of the funeral provider industry, and thank you for the opportunity to share my comments with the Committee. If there are any questions, I may be reached at (713) 437-6745 (day) or (713) 680-9718 (evening).

Sincerely,



Robert R. Johnson

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APPENDIX A

7106 Alderney Dr.
Houston, TX 77055
November 1, 1999

The Honorable John Breaux
United States Senate
503 Hart Senate Office Building
Washington, DC. 20515-1803

RE: Violations of FTC's Funeral Rule by Mothe Funeral Homes, Inc. (New Orleans, Louisiana)

Dear Senator Breaux:

I join with you in your concerns, as expressed in your October 21, 1999, press release about the Federal Trade Commission's limited enforcement of the Funeral Rule. The GAO Report on Funeral-Related Industries was informative as to the FTC enforcement activities.

What you may not realize is that almost forty percent of the comments received by the FTC and made by consumers were from Louisiana consumers. (List of complaints by Louisiana consumers follows.) My comment and complaint (Comment 63) can be found at the FTC's web site, www.ftc.gov/bcp/rulemaking/funeral/comments/index.html.

Mothe Life Insurance Company has sold over many years, many thousands of funeral policies to individuals residing primarily on the West Bank of New Orleans. Those policies provide for a complete funeral service. The policies are serviced by Mothe Funeral Home.

Mothe Funeral Home determined that it was too costly to provide the funeral service benefits contracted for and devised a scheme to defeat their responsibilities under the funeral policies. Mothe Funeral Home decided to tie to the contract funeral services benefits a particular casket that was so deplorable that few persons, if any, would allow their loved ones to be buried in it. Then, when the beneficiaries under the funeral policy sought to upgrade the casket, Mothe claimed that any upgrade "voided" the funeral policy. The at-need value of the funeral services benefits described in the policy is calculated to be over \$3,400; however, because Mothe asserted the policy was "voided" by a casket upgrade, they agreed only to make a token payment of \$700 towards the value of the funeral service requested by the family.

Civil lawsuits filed against Mothe and other Louisiana funeral insurance companies and funeral homes for this same course of conduct include: *Michael A. Chatelain and Alvin Hindelang, v. Mothe Funeral Homes, Inc., Mothe Life Insurance Company and Boyd Mothe, Jr.*, Cause No. 517076-L, Twenty-fourth Judicial Dist. Court, Jefferson Parish (Nov. 13, 1997), and in the matter of *Elmer C. Feldheim, Peggy F. Porter, Henry J. Guidry, Bonnie F. Lonegras and a Class of Similarly Situated Individuals and/*

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Entities v. SI-SIFH Corp. SI-SI Insurance Company, Inc., Loewen Louisiana Holding, Inc and the Loewen Group International, Inc. (pleading reproduced at <http://vbimail.champlain.edu/famsa/laalert.htm>). In the reported appellate case of *Rabenhorst Funeral Home, Inc. v. Tessler*, 674 So. 2d 1164 (La. App. 1st Cir. 1996), the First Circuit Court construed a funeral service insurance benefit contract remarkably similar to Mothe's, and found no language in the contract that provided for the forfeiture of the contractual funeral service benefits upon the selection of an upgraded casket. *Id.* at 1167. The *Rabenhorst* court concluded that the parties did not intend that the decedent's heirs suffer a complete forfeiture of the value of goods and services upon the substitution of a casket.

Because consumers were being forced to resort to lawsuits to obtain their contractual funeral service benefits, the Louisiana legislature enacted H.B. 616 (Act. 949) in 1997 to clarify the rights that consumers would have when making a claim under a funeral services policy. H.B. 616 reenacts La. R.S. 22:253 to provide that consumers had a right to upgrade the casket. The consumer could select a better quality casket, pay the additional costs, and not be forced to sacrifice the remaining contractual funeral service benefits.

My mother-in-law ceased living on April 26, 1999, almost two years after H.B. 616 became effective. Without knowing of such law, we repeatedly asked for the exact right provided by that statute, however, Boyd Mothe, Jr. and Mothe Funeral Homes, Inc. refused to allow any upgrade unless we gave up the remaining contractual funeral service benefits.

We wrote Mothe Funeral Home and set out our complaint one month following the funeral. No owner or employee of Mothe Funeral Home responded to our letter. Instead their attorney sent a letter offering no settlement and threatening a lawsuit for defamation. In a later phone conversation with their attorney, he stated, "My client is not inclined to do anything. I guess you will have to file a lawsuit."

I recently filed the attached complaint, dated October 28, 1999, with Ms. Dawn Scardino of the Louisiana State Board of Embalmers and Funeral Directors. Included as attachments to the complaint are copies of H.B. 616, La. R.S. 22:253, and newspaper articles explaining that revised law. The Louisiana Funeral Board by law has seven members, six of which must be from the funeral industry. The other member is a consumer representative who must be over sixty years of age. The Louisiana Funeral Board does not have a strong, proactive consumer protection reputation, and I am not hopeful that they will take any action.

Any assistance your office can offer in causing the Louisiana Funeral Board to enforce its rules and prevent the defrauding of elderly consumers attempting to obtain benefits under prepaid funeral services contracts would be appreciated. Your concerns for and work to benefit older Americans is appreciated.

If you require any additional information, I may be reached at 713-437-6745 (day), or 713-680-9718 (evening).

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Sincerely,

Robert R. Johnson

c: Senate Special Committee on Aging
Fraud Hotline
G31 Dirksen Senate Building
Washington, D.C. 20510

Comments to FTC:

- 59. Peggy F. Porter [Comment 59]
- 63. Robert R. Johnson [Comment 63]
- 68. William Withenmidt [Comment A-04]
- 71. T.V. Picraux Jr. [Comment A-07]
- 79. Val J. Franz [Comment A-15]
- 89. Pete Van Wassberge, Jr. [Comment A-25]
- 90. Norma M. Vodanovich [Comment A-26]
- 92. June J. Ordes [Comment A-28]
- 100. Kerry John Anzalone [Comment A-36]
- 145. Elmer Feldheim, [Comment A-81]
- 148. Stephanie Lawrence, [Comment A-84]
- 133. Larry Chedotal, Sr., Restlawn Park Cemetery & Mausoleum, Inc. [Comment A-69] (cemetery owner, on behalf of consumers)

APPENDIX B

COMMENTS FILED WITH THE FEDERAL TRADE COMMISSION
PURSUANT TO FTC'S REQUEST FOR COMMENTS CONCERNING
TRADE REGULATION RULE OF FUNERAL INDUSTRY PRACTICES

The FTC in its request for comments on its Funeral Rules, asked the following question:

18. How has the National Funeral Director's Association's Funeral Rule Offenders Program (FROP) affected compliance with the Rule, if at all?

Responses to question 18 are set forth below.

CONSUMER GROUPS

American Association of Retired Persons (AARP) - "AARP wishes to recognize the enforcement efforts made by the Commission over the past decade and urge that such activities be continued. The Commission has conducted a number of mystery shops throughout the country, which in some instances led to serious court-imposed penalties against those violating the Rule. The industry too, through its national association, has taken steps to educate its members about the Rule. However, it is *most disturbing to find minimal changes in compliance with critical elements of the Rule.*

AARP opposes offering violators of the Funeral Rule an option to make a voluntary payment and retain anonymity under the FROP. Based on the small sampling of violators identified by sweeps conducted by the FTC, it is difficult to ascertain the effectiveness of the FROP. However, in viewing the statistics culled from AARP's research, it appears that neither the FTC's enforcement efforts nor the Funeral Rule Offenders Program have had the desired effect. What remains a source of frustration is the fact that in a program designed to deter violations and reduce recidivism, the anonymity component of the program makes it impossible to gauge its success."
Comment A55, www.ftc.gov/bcp/rulemaking/funeral/comments/CommentA-55.htm

Funeral Ethics Association - "*The Funeral Ethics Association is not at all convinced that the FROP is in the best interest of consumers. We commend NFDA and the FTC for trying to come up with some reasonable accommodation to the huge cost of defending against an FTC unilateral decision. Our sense is that the funeral directors have saved some money, but they've also gotten a benefit to which they may not be entitled. Finding the rascals is not as effective as disclosing who they are and what they did. To an outsider, it looks somewhat like a cozy deal where both the NFDA and the FTC get some financial benefits, and cost relief, to which the offending licensee may not be entitled. . . ."*
Comment A10, www.ftc.gov/bcp/rulemaking/funeral/comments/CommentA10.htm

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National Association of Consumer Agency Administrators - "However, in most state and local enforcement actions, it is the public nature of the action taken by the agency which causes the most change in any industry's behavior. Allowing funeral home service and good providers to, in effect, be counseled for violations of the Rule may lead some providers to believe that compliance is not taken seriously by enforcement agencies and consumers. As with most other industries, NACAA believe that the funeral industry will begin true policing of its own members when enforcement actions are public and consumers are aware of the lack of compliance in funeral homes in the area."

Comment A-87, www.ftc.gov/bcp/rulemaking/funeral/comments/comment087a.pdf

Karen Leonard and Bob Treuhaft on behalf of Jessica Mitford's The American Way of Death Revisited - "Any program that allows secrecy from the public of wrongdoing is inherently unjust to the consumer. When a mortuary has been defrauding the public over decades, it is an important right for those past customers to know that they have lost hundreds to thousands of dollars because the mortuary did not give them the right to choose. They have a right to confront the criminal to redress their grievances. Your stand to protect people who knowingly failed to disclose information that could increase their profits and thwart the consumer's right to choose less expensive alternatives is patently anti-consumer. It also conflicts with the States right to prosecute wrongdoing."

Comment A-48, [www.ftc.gov/bcp/rulemaking/funeral/comments/CommentA-48 karen leonard.htm](http://www.ftc.gov/bcp/rulemaking/funeral/comments/CommentA-48_karen_leonard.htm)

FUNERAL INDUSTRY GROUPS

National Funeral Directors Association (NFDA) (major industry organization and administrator of FROP) - "The Funeral Rule Offender's Program ("FROP"), developed jointly by the FTC and NFDA, serves two compliance objectives. First, it brings funeral homes found to be in violation of the Funeral Rule into compliance through education, training and price list reviews. In most cases where non-compliance has occurred, it is a result of ignorance or mis-interpretation of the actual requirements of the Funeral Rule rather than intentional misconduct. By emphasizing staff training through teleconferences, Funeral Rule compliance manuals, and completion of Funeral Rule compliance examinations, FROP improves the funeral home personnel's understanding of the requirements of the Funeral Rule.

FROP also serves as a very visible reminder to funeral home owners and managers that staff training and Funeral Rule compliance must be done on a continuous basis. The Funeral Rule sweeps program and the resulting FROP Program have received extensive coverage in funeral industry publications. This keeps the issue of Funeral Rule compliance at the forefront and encourages owners and managers to redouble training efforts. This deterrent effect of FROP has undoubtedly played an important role in raising compliance levels."

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Comment A-56, [www.ftc.gov/bcp/rulemaking/funeral/comments/Comment A-56 -NFDA Comments.htm](http://www.ftc.gov/bcp/rulemaking/funeral/comments/Comment_A-56_NFDA_Comments.htm)

Service Corporation International (largest funeral provider in the world) - "We believe that FROP is a positive and effective means of promoting compliance with the Funeral Rule and should be continued."

Comment A59, www.ftc.gov/bcp/rulemaking/funeral/comments/CommentA59.htm

Directors Investment Group, Inc. (though its affiliates, manages 250 funeral homes in Texas and neighboring states) - "It's [the FROP] probably the most effective program NFDA operates."

Comment 54, www.ftc.gov/bcp/rulemaking/funeral/comments/Comment054.htm

Shultz-Vogel-Johnson Mortuary (funeral home in small town in Nebraska handling about 31 funerals per year) - "Has taken the non-corrupt and given them a way in which to save face and learn the correct way in which to practice."

Comment A-43, [www.ftc.gov/bcp/rulemaking/funeral/comments/CommentA-43 -bjohnson.htm](http://www.ftc.gov/bcp/rulemaking/funeral/comments/CommentA-43_bjohnson.htm)

Illinois Funeral Directors Association. A contrary industry view, "Our Illinois Funeral Directors Association believes that the FROP is not necessarily in the best interest of consumers. We commend NFDA and the FTC for trying to come up with some reasonable accommodation to the huge cost of defending against an FTC unilateral decision. Our sense is that the funeral directors have saved some money, but they've also avoided disclosure of their prosecution. Fines help, but disclosure puts consumers on alert."

Comment A34, www.ftc.gov/bcp/rulemaking/funeral/comments/CommentA34.htm

ENDNOTES

1. GENERAL ACCN'T OFF., FUNERAL-RELATED INDUSTRIES, COMPLAINTS AND STATE LAWS VARY, AND FTC COULD BETTER MANAGE THE FUNERAL RULE (GAO/GCD-99-156, Sept. 23, 1999). (hereinafter GAO Report) www.gao.gov/new.items/gg99156.pdf
2. Letter from Sen. Charles E. Grassley, Chairman, Senate Committee on Aging, to Mr. Robert Pitofsky, Chairman, Federal Trade Commission (Oct. 21, 1999). <http://aging.senate.gov/ftcltr.htm>
3. Press Release from Sen. John Breaux, Ranking Member, Senate Committee on Aging, *Federal Government Must Better Manage Funeral Rule* (Oct. 21, 2000). www.senate.gov/~breaux/releases/991021.htm
4. Letter from Robert R. Johnson to Donald S. Clark, Secretary, Federal Trade Commission (July 9, 1999) (Comment 63). www.ftc.gov/bcp/rulemaking/funeral/comments/Comment063.htm
5. FEDERAL TRADE COM'N, ANN. RPT. FY 1997, *Consumer Protection Mission*. www.ftc.gov/os/ar97/conpro.htm
6. *Id.*
7. GAO Report at 1.
8. Letter from Robert Pitofsky, Chairman, Federal Trade Commission, to Charles E. Grassley, Chairman, Special Comm. on Aging (Nov. 24, 1999) (provided under FTC FOIA Request No. 200-554) at 3 (hereinafter, "Pitofsky Letter").
9. Federal Trade Com'n, Dissenting Statement of Commissioner Orson Swindle, in *Funeral Rule - Marketing Practices*, File No. P9874407 (reproduced in GAO Report at 71).
10. Dissenting Statement of Commissioner Orson Swindle (GAO Report at 71).
11. GAO Report at 13.
12. Prepared Statement of the FTC to the Special Committee on Aging, U.S. Senate, September 27, 1996, <http://ftc.gov/os/1996/9610/funrlsta.htm>
13. Pitofsky Letter at 4.

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14. GAO Report at 20, Table 6.
15. GAO Report at 10.
16. FTC, How to Contact the Federal Trade Commission.
www.ftc.gov/ftc/telephone.htm.
17. FTC, Bureau of Consumer Protection Complaint Form.
www.ftc.gov/ftc/complaint.htm
18. 15 U.S.C. § 57b.
19. Pitofsky Letter at 5 n.9 (\$14,270 in consumer redress was paid by one defendant funeral provider).
20. FTC Consumer Protection Mission, Consumer Redress Actions.
www.ftc.gov/os/ar97/bcpreddress.htm
21. Letter from Peggy F. Porter to Secretary, Federal Trade Commission (July 9, 1999) (Comment 59). www.ftc.gov/bcp/rulemaking/funeral/comments/Comment59.htm
22. *Id.*
23. See Letter from Robert R. Johnson to Donald S. Clark, Secretary, Federal Trade Commission (July 9, 1999) at 6-8. (Comment 63) www.ftc.gov/bcp/rulemaking/funeral/comments/Comment063.htm
24. FEDERAL TRADE COM'N, ANN. RPT. FY 1997, *Consumer Protection Mission*.
www.ftc.gov/os/ar97/conpro.htm
25. GAO Report at 14-15.
26. GAO Report at 46, Appendix III Funeral Home Sweeps.
27. Pitofsky Letter at 3.
28. GAO Report at 2.
29. GAO Report at 20, Table 6.
30. GAO Report at 15.
31. GAO Report at 20-21.

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32. Pitofsky Letter at 5 (no civil penalties collected in 1998; only \$11,000—the penalty for a single violation of FTC rules—collected in 1999).
33. Fed. Trade Comm., Consumer Access to Price Information about Funerals to Get Major Boost Under New FTC/Industry Program (Jan. 19, 1996).
www.ftc.gov/opa/1996/9601/funera.htm.
34. Pitofsky Letter at 3, n.4.
35. Prepared Statement of the FTC for the Special Committee on Aging, September 27, 1996, at n.7. www.ftc.gov/os/1996/9610/funrlsta.htm.
36. Pitofsky Letter at 4.
37. GAO Report at 3.
38. GAO Report at 7.
39. Pitofsky Letter at 5.
40. *Id.*
41. 15 U.S.C. § 46(f). *See also* 15 U.S.C. § 57b(b) (relief granted by courts may include “public notification respecting the rule violation or the unfair or deceptive act or practice”).
42. Comments concerning the FROP and made to the FTC during its Request for Comments Concerning Trade Regulation Rule on Funeral Industry Practices (05/05/99), are attached as Appendix B.
43. Pitofsky Letter at 3, n.4.

April 25, 2000

Dear Senator Breaux and Senator Grassley:

As per my recent viewing of some of the taped hearings of the sad and tragic stories told by many who had personally suffered from the funeral industry, I was moved and struck by the horrendous acts of the people who work in the funeral industry. I firmly believe that this kind of base conduct must be stopped, but the only real way that this will occur is if your committee acts with real legislation that safe guards the grieving families and people who make uniformed decisions based on what they are told by people in the funeral industry. Listed below are three points that I hope will be considered by your offices and the Committee on Aging as you begin to draft legislation on this important matter.

1. The industry must avoid using deceptive tactics that distract or deceive the grieving person, family or individual from making informed choices.
2. The executor of the estate and family should have the power to view the holding place where their loved one is placed. That includes inspecting the facility to make sure the company is acting responsibly in tending to the deceased and has not been misplaced, mixed up with another deceased individual or laying on a floor, as was mentioned at the hearing. Also, the executor/family should have immediate legal recourse to act if either the holding facility or funeral home in some way prohibit this from occurring.
3. Finally, each state in America should be held to a stricter accountability with a legal set of ethics in place and a panel that hears and reviews complaints with in a 30 day period of time and acts upon the complaint within 40 days. The state boards should clearly show that they are acting in good faith. Currently in Texas this seems not to be the case.
4. And finally, a bill of rights should be enacted that protects and safe guards people from unscrupulous companies and dishonest people who work in the funeral industry.

From New York to California, the concerns of many, many people have been ignored for a long time. Congress must now act with serious legislation that protects the public from unethical business practices and people who prey on others in a time of crisis.

I ask that you contact me in the future and inform me on the legislation that must be drafted to help protect the public from the unconscionable conduct that has gone unchecked for to long.

Sincerely,

Gabrielle Burns
President
Jupiter Index Web Magazine
P.O. Box 2024
Austin, Texas 78768

156 Edison Blvd.
Silver Bay, MN 55614
April 14, 2000

Senator Charles Grassly, Chairman
Senate Special Committee on Aging
Dirksen Office Building
Washington DC

Dear Senator Grassley:

I watched, with great interest, some of the hearings you are conducting on Funeral Homes and Cemeteries during this past week. First let me thank you and your fellow Senators for having this hearing. While I don't believe I am quite old enough to be focusing on the subject (death) for myself, I do have an aging mother I care for so my concerns, and what I can learn may be of help to me, and my family, sooner than we'd like.

I do have an issue I would like to bring to your attention, one that possibly could be addressed during your deliberations. That issue concerns AARP, and one specific comment made by their representative at your hearing when asked by your companion senator from Alabama. He specifically asked the AARP representative about informing the public through AARP'S publications about various options regarding patron's rights, and possibilities. An exchange of sorts later took place regarding the purchase of a coffin with the gentleman from the Funeral Director's Organization. It seems in your state, Iowa, it is legal to purchase a coffin from someplace other than the funeral director a family is using; in your companion senator's state it is not, the coffin must be purchased from a funeral home or cemetery. That sent me to the March-April issue of AARP's publication of Modern Maturity. Starting on page 61, and going through page 73, there is what I originally considered an excellent article on exactly the subject you are investigating. I had read the article and kept it for future reference. Reading the article after watching the hearings, I did not find any reference in any part of the article that informed AARP's readers that laws may differ in the various states. I think it would be prudent for your committee, if it does have further communication with the witnesses, especially the AARP representative, that readers be cautioned that laws vary, and that they should probably check with their State's legal representative to determine what is legal in their state. I know I will be calling my state official to find out the information before I am faced with these decisions.

I did not watch enough of your hearings to be pro or con on any type of Federal laws that mandate states to comply on all issues. I tend to believe that there is so much diversity in climates, precipitation factors, and other elements of nature that states must be allowed to have absolute say over issues of this nature.

Again, let me thank you for conducting the hearings on this subject, and I also was extremely impressed with the non-partisan atmosphere, and the respect the two of you seemed to have for each other.

Sincerely,



Carlene A. Perfetto



THE MARK OF EXCELLENCE

MONUMENT BUILDERS OF NORTH AMERICA

3158 S. RIVER ROAD, SUITE 224 • DES PLAINES, ILLINOIS 60018 • TELEPHONE: (847) 803-8800 • FAX: (847) 803-8823

March 27, 2000

Ms. Lauren L. Fuller
 Chief Investigative Counsel
 Special Committee on Aging
 SD-G 31, Dirksen Senate Office Bldg.
 Washington, DC 20510.

Dear Lauren:

I appreciate your office contacting me last week regarding the upcoming hearings April 10-11 in Washington DC to further look into consumer issues. As a constituent of Senator Grassley's and being the Immediate Past President of our national association, Monument Builders of North America, I will be attending the 2 day workshop.

Following is our submission to the FTC from last fall that prefaced our participation at their round table hearings in which we reviewed the Funeral Rule. While our report does not address all the issues your committee addresses in the GAO report, it does deal with many issues in-depth. I would be pleased to verbally comment at your hearings on other issues that were not addressed.

I look forward to attending your upcoming hearings. If you have any questions before then, please call me.

Sincerely,

Michael P. Brannon, CM
 Immediate Past President

MPB/bmm

Enclosure

MONUMENT BUILDERS OF NORTH AMERICA is a trade association founded in 1906 to promote the beauty and caring that is signified by a cemetery monument.

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August 9, 1999

Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Ave., NW
Washington, D.C. 20580

Re: **Funeral Rule Review Rulemaking
Comment on Behalf of
Monument Builders of North America,
16 CFR Part 453**

I. INTRODUCTION

This comment is filed by the Monument Builders of North America ("MBNA"), through its counsel Howe & Hutton, Ltd.

MBNA's purpose for participating is to provide technical assistance and information to the Federal Trade Commission (FTC) regarding its Trade Regulation Rule on Funeral Industry Practices ("the Rule"), and to state MBNA's position regarding expansion of the Rule to cover similar and related practices of cemeteries which adversely affect consumers.

Monument Builders of North America, a not-for-profit international trade association founded in 1906, represents leading retail, wholesale, manufacturing and supply firms of the monument industry throughout the United States and North America. Its membership comprises persons and firms engaged in making, lettering, selling, and installing grave monuments and markers made principally of granite, marble, bronze and combinations thereof. While

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maintaining a broad range of programs, services and activities for its members, the primary objectives of MBNA are twofold: first, to encourage the public's interest, knowledge and appreciation of memorialization; and second, to promote the best interests of the public by supporting freedom of choice in memorialization. To this end, in 1970 MBNA adopted a Statement of Policy setting forth its philosophy for fair competitive practices in the industry. (Exhibit 1) In 1983 MBNA adopted a Code of Good Practice, outlining a set of business ethics and practices which serve to protect the consumer. (Exhibit 2) In 1998 MBNA adopted a Industry Position Paper on the Protection of the Rights of the Consumer When Dealing with the Deathcare in North America. (Exhibit 3)

MBNA has provided information to the Federal Trade Commission on memorial industry trade practices on other occasions, including most recently as an active participant in the regulation review and amendment proceeding that began on December 9, 1987; has worked with legislatures and attorneys general of numerous states; has participated as an amicus curiae in federal and state antitrust litigation in combating practices which are detrimental to consumers; and has submitted information to the U.S. Department of Justice on anticompetitive activities.

In addition, MBNA has worked in conjunction with the American Cemetery Association, now known as International Cemetery and Funeral Association ("ICFA"), the American Association of Retired Persons, and the Veterans Administration to assist consumers. MBNA has also published a number of consumer brochures, such as Purchasing a Monument (Exhibit 4), and also maintains a website (www.monumentbuilders.org) containing useful information for the consumer.

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MBNA's members are not covered by the Rule in its present form. However, MBNA's members' long-time involvement in providing related deathcare goods and services to the public has provided MBNA with a unique awareness of related cemetery practices having a substantial adverse impact upon consumers.

In this Comment, we recommend the Rule be expanded to cover cemeteries and other sellers, including MBNA's members, in the funeral-burial-memorialization marketplace. This would extend coverage to include, for example, sales of grave lots, burial vaults, cremation goods and services, grave openings and closings, and the sale of monuments, markers and related installation and cemetery lettering services. We believe the Rule's disclosure and "unbundling" requirements would better serve consumers if they were expanded to cover sales of all goods and services provided in the burial and memorialization segments of the deathcare industry.

II. THE FUNERAL RULE SHOULD BE EXPANDED TO COVER
THE BURIAL AND MEMORIALIZATION SEGMENTS
OF THE DEATHCARE INDUSTRY

Funeral arrangements are often made at times of emotional distress and are subject to strict time constraints. The Federal Trade Commission determined a trade regulation rule should be promulgated to protect consumers from abuses fostered by the conditions under which funeral purchases are made. The Rule generally requires price disclosures, prohibits the "bundling" of funeral goods and funeral services, and prohibits certain misrepresentations.

MBNA submits that purchases of cemetery lots and related memorialization products and services are also often made at times of emotional distress, and during the same timeframe that funeral arrangements are made. Further, just as the funeral segment of the marketplace faced by

the consumer at both at-need and pre-need has been subject to abuses, so too have the burial and memorialization segments of the marketplace.

A. Commission Questions Addressed

The Commission has specifically requested comments on whether it is desirable to revise the Rule's definition of "funeral provider" in order to expand the coverage of the Rule to include non-traditional providers of funeral goods and services. 64 Fed. Reg. 24250, 24251 (1999). The Rule currently only applies to providers of funeral goods and services. 16 CFR §453.1(i). "Funeral goods" are defined as "goods which are sold or offered for sale directly to the public for use in connection with funeral services." 16 CFR §453.1(h) "Funeral services" are defined as "any services which may be used to care for and prepare deceased human bodies for burial, cremation or other final disposition; and arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies." 16 CFR §453.1(j). In other words, the non-traditional members of the funeral industry, such as cemeteries and casket retailers, do not meet the definition of "funeral provider" and are thus not subject to the Rule's provisions.

Specifically, the Commission has asked:

- (1) Should the Commission expand the definition of "funeral provider" in order to bring non-traditional members of the funeral industry within the scope of the Funeral Rule's coverage? Are consumers being harmed by the current limitation on the scope of the Rule's coverage?
 - (a) What definition should be used to delineate those entities and individuals subject to the Funeral Rule?
 - (b) What are the costs and benefits of broader definitions?

(2) Should non-traditional providers of funeral goods and services be subject to only certain provisions of the Funeral Rule?

(a) If so, to which provisions should they be subject?

64 Fed. Reg. 24250, 24253 (1999)

B. Summary of MBNA's Responses to These Questions

MBNA does not believe that merely expanding the definition of "funeral provider" would be sufficient or the right means to bring non-traditional members of the funeral industry within the scope of the Rule's coverage. Nevertheless, it is important for all segments of the deathcare industry to be covered by the provisions of the Funeral Rule. Preparation for a funeral generally begins at time of death and includes transactions with a variety of vendors, not just the funeral provider, before burial and memorialization have been completed. Consumers are being harmed by the current limitation on the scope of the Rule's coverage. Separate definitions and regulatory provisions should be added to include other sellers of goods and services in both the burial and memorialization segments of the deathcare industry. Just as the costs borne by funeral providers for compliance with the Rule are minimal, they will be minimal for cemeteries, casket sellers, monument sellers and others brought under the Rule. The benefits to consumers, on the other hand, will be substantial. Non-traditional providers covered as a result of the expanded scope of goods and services covered by the Rule should be subject to virtually all provisions of the Rule relating to price and information disclosures, "unbundling" of goods and services, and misrepresentations.

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C. Consumer Problems in the Burial
and Memorialization Marketplace

This section will describe unfair or deceptive acts or practices in the burial and memorialization marketplace and provide evidence of the extent to which they take place. MBNA believes consumers would be best served if the Rule's definitions and coverage provisions were expanded to cover related abuses in the burial and memorialization marketplace.

1. Tying and Monument Installation Fees

In addition to the sale of grave lots, cemeteries commonly engage in the sale of other products and services, including burial vaults, mausoleums, monuments or markers, grave openings and closings, and foundation and installation services. Cemeteries are in direct competition with funeral providers for some of these products and with independent monument builders and others who sell monuments and markers, vaults and other such products, and who install such products.

For decades, many cemeteries have imposed rules requiring that any marker or monument to be installed in the cemetery be purchased from the cemetery. (See Group Exhibit 5) Many cemeteries have also required that a monument or marker, or the foundation for such items, could only be installed in the cemetery by cemetery employees, regardless of where the monument or marker was purchased. (See Group Exhibit 6) Cemeteries thereby have insulated themselves from competition by monument retailers, enabling cemeteries to charge consumers substantially higher prices for monuments, markers, foundations and their installation.

Frequently, and especially in the pre-need context, the cemetery offers a package arrangement for the lot, monument and installation. The charges are not broken out separately and this enables the cemetery to undercut the monument retailer's price for the monument. By inflating the other parts of the package, the cemetery can adjust its charges for installation up or down in a given competitive situation, while the monument retailer is required to pay whatever fee the cemetery imposes.

Other cemeteries have resorted to other anticompetitive practices aimed at hindering or eliminating consumer access to competition by monument retailers. Cemeteries that don't directly require the purchase of the monument, marker and/or foundation with the lot, often impose fees or unreasonable rules in connection with installations by independent monument retailers, which have the effect of forcing the consumer to buy from the cemetery.

These fees include office clerical fees, inspection fees, road use fees for monument retailers' vehicles, installation fees, post-inspection fees, institutional service fees, and other such charges. Some are purportedly based on the actual time spent by clerical staff and manual laborers in carrying out various duties in the cemetery; most are essentially arbitrary. (See Group Exhibit 7)

After some successful legal challenges to tie-ins, cemeteries began using an installation fee system, which involves charging so many cents per square inch for an installation, whether the installation is performed by the cemetery crew or monument retailer. Installation often consists simply of removing the sod and setting the marker in the area cut out. The "per square inch" installation system caught on quickly nationwide. The sums involved for the monument retailer, and passed on to the consumer, become substantial. The mathematics are simple but

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dramatic. A 62-inch x 16-inch flat memorial, for example, is 992 square inches. At ten cents per square inch, the charge for installation is \$99.20. At thirty cents per square inch, the installation fee is \$297.60. At fifty cents per square inch, the installation fee is \$496, an exorbitant amount for a relatively unskilled job, which can take as little as 30 minutes.

We must emphasize some cemeteries charge the monument retailer, and consequently the customer, for installation even when the monument retailer does the installation work; that is, charging for work performed by the monument retailer, not the cemetery. (See Group Exhibit 8)

The immediate impact of these outrageous charges is to substantially increase the cost of the installed monument to the consumer. These exorbitant installation charges also serve two purposes for cemeteries. One, they raise substantial revenues by charging consumers above-market prices for monuments, markers, foundations and installation; and two, they frequently enable cemeteries to eliminate competition by monument retailers and other sellers if the cemetery does not impose the same charges on monuments purchased from the cemetery and installed by cemetery employees, or fails to disclose until after the consumer has bought from the independent retailer the cemetery's charges to the third party installer.

These excessive charges are not put in perpetual trust funds. They go straight to the cemetery's operating revenues. They do not provide long-term protection for the consumer, despite the higher price. And most importantly, they are usually not disclosed to the consumer when he or she is buying a cemetery lot at a time of need or on a pre-need basis.

Monument retailers have had varying degrees of success in challenging these practices as *per se* illegal tying arrangements over the years. Recently, on July 24, 1998, in Stephens v. Springdale Cemetery, Inc., et al., Case No. 98 CH 156, the Tenth Judicial Circuit Court in

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Peoria County, Illinois, entered a preliminary injunction against the cemetery after finding the cemetery was unlawfully tying the sale of burial lots to the sale, installation, repair and engraving of markers. In reaching its decision, the court reasoned: "When the largest cemetery in the market demands as a precondition to the sale of cemetery lots that its customers purchase installation services exclusively from it, the substantial effect on commerce in that product and the restraint of trade in that product is patent." Further, "[t]he common law right of a deceased person's descendants and loved ones to bury, visit, mark the final resting place, and honor the dead is an independent basis for enjoining the [cemetery's] practices. The common law right, known as the right of sepulture, cannot be abridged by cemetery authority's unreasonable rules, regulations and procedures. Any unreasonable limitation on the rights of sepulture can be enjoined by the deceased one's family." Specifically, the cemetery was enjoined from requiring its then current application form; a mail application process; a \$75 application fee; a \$75 administration fee; a \$25 work order permit; a \$100 foundation inspection fee; a \$75 completion inspection fee; payment by cashiers' check only; a work order for each job; a board in/board out requirement; an indemnification agreement; certain policies and procedures for a contractor's application; certain memorial specification and installation requirements; and a \$75 road use fee. *See also e.g., Moore v. Jas. H. Matthews & Co.*, 550 F.2d 1207 (9th Cir. 1977); *Rosebrough Monument Co. v. Memorial Park Cemetery Ass'n*, 666 F.2d 1130 (8th Cir. 1982), *cert. denied*, 457 U.S. 1111 (1982); *Monument Builders of Greater Kansas City v. American Cemetery Ass'n of Kansas*, 891 F.2d 1473 (10th Cir. 1989), *cert. denied*, 495 U.S. 930 (1990); *Baxley-DeLamar Monuments v. American Cemetery Ass'n*, 938 F.2d 846 (8th Cir. 1991); and *Florida Monument Builders v. All Faiths Memorial Gardens*, 605 F.Supp. 1320 (S.D. Fla. 1984).

When the Rosebrough case came back before the Eight Circuit in 1984, 736 F.2d 441, *cert. denied*, 469 U.S. 981 (1984), the court approved certain rules or guidelines imposed on the cemeteries by the district court to remedy the illegal tying. These included:

"(1) the cemetery may establish specifications for the foundation of each type memorial which it permits in the cemetery. These specifications shall be the same as the cemetery itself utilizes in preparing foundations for particular type memorials;

(2) the cemetery may schedule, upon reasonable notice, all installations, taking into account weather and ground conditions, cemetery burial services, availability of personnel, etc.;

(5) the cemetery may require removal of excavated dirt and cleanup of the installation site;

(6) the cemetery may require

(a) evidence that the installer's employees are covered by workman's compensation insurance and that the installer carries adequate public liability insurance in which the cemetery is a named insured, and

(b) a bond to insure compliance with the rules and regulations;

(7) the cemetery may charge a fee based on the actual labor costs to inspect the finished work product of third party memorial foundation services; and

(8) the cemetery may require that the installer expeditiously correct any deviations from the specifications. If after notice, any deviation is not corrected the cemetery may make such corrections at the installer's expenses. All such

rules and regulations which the cemetery may hereinafter adopt are to be reasonable in nature and application.

The Eighth Circuit deleted three rules imposed by the district court. The first two would have allowed cemeteries to require the foundation site be laid out by cemetery personnel and the cemetery to supervise the foundation and installation process and to require the installation meet specifications after inspection and prior to placement of the memorial. The court noted that "[b]y requiring that foundation sites be laid out by cemetery personnel and that the work of third party installers be supervised at a fee . . . the cemeteries could gain an unfair competitive advantage over the third party installers and thus maintain the market control achieved through illegal tying arrangements." The court also deleted a rule that would have allowed a cemetery which contributes separately to a fund for the care of memorials to require a third party installer to contribute to such fund the same percentage of the charge by the installer as is contributed by the cemetery from its own installation charge. The court, after noting that Missouri law required endowed care cemeteries, such as those involved in the case, to set aside and deposit in a trust fund a percentage of the sales price for each grave sold to be used only for the care and maintenance of the cemetery, said, "[a] cemetery is not statutorily required to set aside any amount from the price of its installation service. Whether a cemetery chooses to do so should not obligate a third party installer to contribute to a fund to cover the costs of what remains the cemetery's responsibility, i.e., care and maintenance of the cemetery."

The Eighth Circuit's handling of these rules is instructive vis-à-vis the potential detrimental effect on consumers, not only of tying of goods and services, but of imposing burdensome rules that can have the same effect.

2. Abuse of Rules

Another trend MBNA has seen in addition to exorbitant installation and foundation fees is a common practice of cemeteries requiring family members who purchase monuments from outside monument retailers to come to the cemetery for the purported purpose of filling out the cemetery's forms in order to have a monument installed on a cemetery lot. Some cemeteries refuse to permit the monument retailer to act as agent for the monument buyer in connection with installation or place other similar obstacles in the consumer's way. (See Group Exhibit 9)

The real reason for requiring the buyer to go back to the cemetery to fill out forms is often to provide the cemetery staff with yet another opportunity to persuade the monument buyer to cancel the order with the monument retailer and instead buy a monument or marker from the cemetery. This practice is often coupled with scare tactics described in the next section.

3. Scare Tactics

Another development MBNA has seen, and it has become more pronounced in recent years, is a scare tactic used to deter customers from buying monuments and markers from monument retailers rather than cemeteries. This is accomplished by cemetery staff advising lot and/or monument buyers the cemetery is not responsible for any damage to a monument or marker regardless of cause if the monument is not purchased from the cemetery, or its designated provider, even if the damage is caused by cemetery staff. This scare tactic is quite effective because consumers are worried that their monuments, markers or gravesites will not be properly maintained even though they have been required to pay into the cemetery's perpetual care fund,

and frequently a separate monument care fund, "early care" charge, and installation fee. (See Group Exhibit 10) Consumers do not want to be caught in a situation such as this. They will sometimes cancel orders with monument retailers rather than take a chance on their monuments or markers not being properly cared for after installation.

4. Refusing to Provide Information

Another serious problem for consumers is the failure of many cemeteries to regularly provide written copies of their governing rules and regulations to consumers and monument retailers. Cemeteries generally have rules and regulations, usually written, sometimes not. These rules cover such items as limitations on the size or type of markers, monuments or other memorials permitted, perpetual care procedures, and procedures to be followed and requirements for installing memorials, including any applicable charges. These rules are subject to change without notice to lot owners or competing retailers.

Cemeteries frequently post these rules or have them available for review only at the cemetery office. However, they are often not available in writing to inquiring consumers or monument retailers.

This failure to disclose makes it difficult for the consumer to shop for a marker or monument elsewhere. It also makes it particularly difficult for independent monument retailers and other sellers to overcome the built-in advantage the cemeteries have in selling monuments, despite the fact that cemetery prices are often substantially higher. Independent monument retailers are often faced with an inability to quote an installation and foundation fee because the cemetery will not disclose its charges. In other instances, retailers are told of increases in

cemetary charges after they have already quoted to consumers based on previously announced charges, and have to requote or absorb the price increase by the cemetary.

How does MBNA know about these practices? MBNA receives correspondence from all over the country from monument retailers submitting cemetary rules, cemetary price sheets for foundations or installations, consumer complaints, media articles, and similar information demonstrating these practices go on around the country. (See previous Group Exhibits and Group Exhibit 11) MBNA has also conducted informal surveys to assess the scope of these practices. (Group Exhibit 12)

D. Consumer is Injured

Who is injured by such practices? Clearly the monument retailer who loses a sale or the opportunity to compete is injured. But the party most injured is the consumer. The consumer faces substantially higher charges for monuments and markers, and especially for installation, a service that can easily be provided by other than cemetary personnel. The entire cost of buying a cemetary lot, a monument or marker, its foundation and installation costs, and perpetual care for the monument separate from perpetual care for the lot, is substantially higher. Ultimately, the consumer is the victim because the cemetary's higher charges are passed on to the consumer by the monument retailer. The monument retailer can control his own costs and charges, but he cannot control the charges imposed by the cemetary even when the monument retailer does the work. Further, the consumer injury may not be limited to economics -- it may extend to emotional injury.

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What is the magnitude of the consumer injury? Just as with consumers injured by funeral industry practices, emotional injury is hard to measure. Economically, if just one-quarter of the approximately two million deaths in the United States each year resulted in an exclusive, inflated installation or other related fees of as little as \$200, the effect on American consumers would be \$100,000,000. MBNA submits the scope of these practices is so widespread that even this number is a conservative estimate.

E. Need for FTC Action

There is an alarming trend toward vertical integration in the funeral-cemetery-memorialization industry. Service Corporation International (SCI) has purchased 3,442 funeral homes, 433 cemeteries, and 191 crematories in North America, Europe and Asia. Yahoo! Finance Profile, Service Corporation Int'l, August 5, 1999. For the three months ended March 31, 1999, SCI reported a gross profit margin for North American cemetery operations of 31.1 percent on revenues of \$69,330,000. The PointCast Network, as of June 8, 1999. For the second quarter of 1999, SCI reported gross margins of 32.7 percent in its cemetery operations, 17.1 percent in funerals, and 14.2 percent in financial services. SCI News, July 29, 1999. Loewen Group, Inc. owns 1,116 funeral homes and 429 cemeteries in North America. The Globe and Mail, June 2, 1999, B-1. Stewart Enterprises, Inc. owns 625 funeral homes and 157 cemeteries throughout the world, including in 30 states in the United States. For the three months ended April 30, 1999, Stewart reported a gross profit margin for cemetery operations of 30.3 percent. The PointCast Network, as of June 9, 1999.

This trend toward vertical integration increases the need for disclosures, requiring that prices of goods and services be broken out so the consumer may have the opportunity to determine which goods and services are needed, to do price comparisons, and to allocate purchases among various suppliers or one supplier as the consumer determines.

As discussed earlier, MBNA has long been an advocate for consumers' rights in this marketplace. Twelve years ago, MBNA entered into a Memorandum of Understanding with the American Cemetery Association (now "ICFA"), which approved Recommended Installation Guidelines for memorials (Exhibit 13).

Among the key provisions of the ICFA and Monument Builders of North America's Recommended Installation Guidelines are:

- (1) The right of consumers to purchase a memorial and installation service from any source;
- (2) The right of a cemetery to charge an inspection fee based only on its actual labor costs, exclusive of general administrative and overhead costs, to inspect an installation;
- (3) The right of a cemetery to require a reasonable nondiscriminatory payment into a perpetual care trust fund for each memorial installed, such payment to be the same whether the memorial was bought from the cemetery or an independent seller; and
- (4) A requirement that written guidelines for installation of memorials be provided upon request, without charge.

These Installation Guidelines are intended to provide a vehicle to avoid unfair trade practices, to better serve the consumer, to enhance retail competition, and to promote a better working relationship within the interment and memorialization industry. They provide for disclosure, prohibit the "bundling" of goods and services, and prohibit unreasonable charges.

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However, because these Guidelines are only recommended and voluntary and because SCI cemeteries, among others, have refused to comply, widespread consumer abuses still occur.

MBNA members' efforts to raise these concerns at the state level have also met with very limited success. Among the states, in recent years Maryland and Virginia legislatures have created new cemetery boards statutes, which are aimed at protecting consumers from these abuses, bringing states with such boards to 12. Florida has dealt with the problems most directly:

497.317 Monuments; installation fees.--

"(1) No cemetery company may charge a fee for the installation of a monument purchased or obtained from and to be installed by a person or firm other than the cemetery company or its agents.

(2) To verify that a monument is installed on the proper grave in accordance with cemetery bylaws, rules, or regulations, the cemetery company shall mark the place on the grave where the marker or monument is to be installed and shall inspect the installation when completed. Nothing in this subsection is intended to imply or require that a cemetery company shall have to lay out or engineer a gravesite or grave sites for the installation of a marker or monument.

(3) A cemetery company may not require any person or firm that installs, places, or sets a monument to obtain any form of insurance, bond, or surety or make any form of pledge, deposit, or monetary guarantee as a condition for entry on or access to cemetery property."

West's F.S.A. §497.317.

497.325 Illegal tying arrangements.--

"(1) No person authorized to sell grave space may tie the purchase of any grave space to the purchase of a monument from or through the seller or any other designated person or corporation.

(2)(a) Non cemetery licensed persons and firms shall have the right to sell monuments and to perform or provide on cemetery property foundation, preparation, and installation services for monuments. However, a cemetery company may establish reasonable rules regarding the style and size of a monument or its foundation, provided such rules are applicable to all monuments

from whatever source obtained and are enforced uniformly as to all monuments. Such rules shall be conspicuously posted and readily accessible to inspection and copy by interested persons.

(b) No person who is authorized to sell grave space and no cemetery company may:

1. Require the payment of a setting or service charge, by whatever name known, from third party installers for the placement of a monument.
2. Refuse to provide care or maintenance for any portion of a gravesite on which a monument has been placed; or
3. Waive liability with respect to damage caused by cemetery employees or agents to a monument after installation.

where the monument or installation service is not purchased from the person authorized to sell grave space or the cemetery company providing grave space or from or through any other person or corporation designated by the person authorized to sell grave space or the cemetery company providing grave space. No cemetery company may be held liable for the improper installation of a monument where the monument is not installed by the cemetery or its agents.

(3) No program offering free burial rights may be conditioned by any requirement to purchase additional burial rights, funeral merchandise or services. Any program offering free burial rights shall comply with s. 817.415."

West's F.S.A. §497.325.

More important for the purposes of this comment than the actions taken by a few states to address these abuses is the failure to act by the vast majority of the states. Just like problems faced by consumers of funeral goods and services, the problems MBNA addresses in this comment are localized in effect but national in scope. They, therefore, can be addressed most effectively by the federal agency whose mandate it is to protect consumers from such unfair or deceptive acts or practices.

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F. Proposed Expansion of the Rule

1. Disclosures MBNA urges the FTC to add to the Rule sections that would address the above-referenced consumer abuses. Specifically, the Rule's disclosure provisions should make it an unfair or deceptive act or practice in the selling or offering to sell cemetery lots or other sites for the final disposition of deceased human bodies or in the selling or offering to sell monuments, markers or other memorialization products, to fail to furnish applicable rules and regulations and accurate price information disclosing the cost to the purchaser for each good and service used in connection with the disposition of deceased human bodies or in connection with the placement of monuments, markers or other memorialization products.

2. Required Purchases The Rule's prohibition on tying should be expanded to make it an unfair or deceptive act or practice in the selling or offering to sell cemetery lots or other sites for the final disposition of deceased human bodies or in the selling or offering to sell monuments, markers or other memorialization products to condition the furnishing of any site, product or service upon the purchase of any other product or service.

3. Misrepresentations The Rule's misrepresentation section should be expanded to address cemetery charges for an installation fee when it does not perform the work. While a reasonable inspection fee based upon the cemetery's actual labor cost may be legitimate, it should be an unfair or deceptive act or practice to require the consumer to pay the cemetery for services it does not actually render or arrange for others to provide. The Rule currently prohibits misrepresentations about a number of things, including cash advance provisions. The funeral

provider is required to disclose he is charging for the service of buying items from third parties. MBNA submits if it is an unfair or deceptive act or practice for a funeral provider to fail to disclose that he is adding a service charge, it is even more unfair or deceptive for a cemetery to charge an installation fee when it is not providing any service at all.

4. Preventative Requirements Finally, preventative requirements should be included, such as mandatory telephone price disclosures, price lists, and statements of the goods and services selected, as are currently required of funeral providers by the Rule.

G. Benefits of Expanded Rule

Consumers are currently faced with a severe shortage of information when it comes to purchases in the cemetery and memorialization segments of the industry. They are also often forced to purchase memorials or memorial foundation or installation services from sources not of their own choosing.

Just as the disclosure and "unbundling" requirements of the Rule have benefited consumers, consumers would be benefited by the expansion of the Rule to cover related goods and services. The bereaved consumer purchasing at need, as well as the consumer purchasing pre-need, would be in a position to make an informed purchasing decision when buying a cemetery lot, monument or related goods or services just as the consumer is now when purchasing a casket or other funeral good or service.

Because restrictions on monuments and markers as well as on installation, foundation and other services and charges for such services can vary so widely from cemetery to cemetery,

consumers would greatly benefit if they were provided this information prior to purchase of a cemetery lot. The consumer would then know that charges and restrictions apply at that cemetery, and could make an informed choice whether the consumer wanted to abide by these charges and restrictions or look elsewhere. Further, even if the selection of a cemetery is limited by availability of alternatives or by emotional ties, the consumer should at least be informed what costs he or she may anticipate.

By prohibiting the tying of certain goods or services to the purchase of other items, the consumer would be able to purchase a monument and monument installation services from the seller offering the best value and services, if he so chooses.

This does not mean that cemeteries will be burdened by such disclosure requirements, any more than funeral directors were. As the reasonable requirements and restrictions imposed by some states, as well as the voluntary guidelines agreed to by the MBNA and the ICFA have shown, disclosure requirements are not unreasonable or burdensome to cemeteries, and are unquestionably useful to consumers.

The need for extending the current Rule is demonstrated by the nondisclosure and anticompetitive practices which have continued even after the adoption of these voluntary guidelines. It is clear that national action by the agency charged with protecting consumers is the most efficient and effective means of addressing these problems on behalf of consumers.

H. FTC Jurisdiction Over Nonprofit and Religious Cemeteries

MBNA understands that ICFA claims that nonprofit and religious cemeteries are not subject to FTC jurisdiction. On May 24, 1999, in California Dental Association v. Federal Trade

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Commission, the Supreme Court noted that the FTC Act gives the Commission authority over persons, partnerships, or corporations, and defines a "corporation" to include "any company . . . or association, incorporated or unincorporated, without shares of capital or capital stock or certificates of interest, except partnerships, which is organized to carry on business for its own profit or that of its members," and ruled the Commission's jurisdiction extends to an association that provides substantial economic benefit to its for-profit members. The Supreme Court left for another day a determination of the FTC's jurisdiction over other types of nonprofits, stating:

"[W]e do not, and indeed, on the facts here, could not, decide today whether the Commission has jurisdiction over nonprofit organizations that do not confer profit on for-profit members but do, for example, show annual income surpluses, engage in significant commerce, or compete in relevant markets with for-profit players. We therefore do not foreclose the possibility that various paradigms of profit might fall within the ambit of the FTC Act. Nor do we decide whether a purpose of contributing to profit only in a presumed sense, as by enhancing professional education efforts, would implicate the Commission's jurisdiction." *Id.* at footnote 6.

It would appear that most non-profit and religious cemeteries would show annual income surpluses, engage in significant commerce and compete in relevant markets with for-profit entities sufficient to meet the FTC jurisdictional requirement of being a "company . . . or association . . . which is organized to carry on business for its own profit or that of its members." Whether an entity is required to pay taxes on all of its income under Internal Revenue Service regulations should not be determinative of whether it is subject to regulation by the Federal agency charged with protecting consumers from unfair and deceptive acts and practices. All cemeteries, for-profit and non-profit, should be included under the Funeral Rule.

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III. CONCLUSION

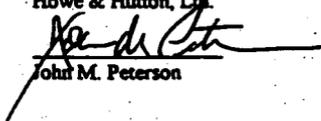
In summary, MBNA strongly urges the FTC to take advantage of this opportunity to address practices in the funeral-cemetery-monument industry that have substantial adverse monetary impact on consumers. MBNA supports retention of the Funeral Rule, but urges the Commission to expand the Rule – perhaps even renaming it the Deathcare Industry Rule – to require appropriate disclosures and prohibit “tying” and misrepresentations by cemeteries.

Respectfully submitted,

MONUMENT BUILDERS OF
NORTH AMERICA

Howe & Hutton, Ltd.

By:


John M. Peterson

North American Cemetery Regulators Association

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April 10, 2000

Senator Charles E. Grassley, Chairman
 United States Senate, Special Committee on Aging
 G31 Dirksen Senate Office Building
 Washington, D.C. 20510-6400

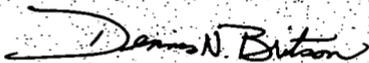
Dear Senator Grassley:

It is our understanding that you are accepting comments in conjunction with your April 10th and 11th hearing on Funerals and Burials: Protecting Consumers from Bad Practices. We appreciate the opportunity to provide comments on this important topic. Consumer protection is our number one priority and meaningful disclosure should be the core method of protecting consumers. We support efforts to enhance consumer protection by mandating disclosure of material information and by prohibiting misrepresentations and deceptive or unfair practices.

This industry has experienced dramatic changes. Laws regulating the industry may need to be changed to reflect those changes. Government regulation of this industry is important to protect consumers and provide mechanisms to detect fraud or theft and assist when they encounter problems. Government agencies must have adequate laws, staffs and resources to police this industry and prosecute violations when discovered. Violations are normally discovered from complaints and government field audits.

However, most issues involved with funerals and burials are local in nature and local regulation will be the most effective and targeted. We are working to enhance and improve state and provincial regulation of the deathcare industry. We also stand ready to work with you on any national or international issues. For a more detailed explanation on some of NCRA's positions, please see the attached materials. We would be happy to provide additional information to the committee about the NCRA and its activities.

Sincerely,



Dennis N. Britton
 NCRA Executive Director



President: Javi Robinson Kentucky
 President-Elect: Lucy McCann Louisiana
 Vice President: Elva Ross Florida

Secretary: Richard Robinson New York
 Treasurer: Art Gilis Tennessee
 At-Large: Steve Riter Maryland

At-Large: Sandy Siegel Missouri
 At-Large: Susan Garland New Jersey
 Executive Director: Dennis Britton Iowa

DNB: CI

Enclosures: Consumer tips list of "What Every Consumer Should Know"

NCRA's August 4, 1999 letter to the Federal Trade Commission, discussing the Commission's Federal Register Notice soliciting comments on the overall costs, benefits and the continuing need of the Funeral Rule, is attached for your information. We would be happy to provide additional information to the committee about the NCRA and its activities.

cc: Jerri Robinson, NCRA President
Steve Sklar, Chair, NCRA Consumer Affairs & Education Committee
NCRA Membership

PRE-NEED FUNERAL AND BURIAL ARRANGEMENTS

WHAT EVERY CONSUMER SHOULD KNOW

The NCRA believes that disclosure of material information should be the core method of protecting consumers. Inadequate knowledge, regarding the merchandise and services relating to funeral, burial and cremation merchandise and services, remains the key problem facing consumers. The NCRA is working to create greater consumer awareness and knowledge.

- ❖ Consumers need to understand what they are buying.
- ❖ Consumers need to ask questions - lots of questions.
- ❖ Consumers need to shop around and get price information.
- ❖ Consumers need detailed descriptions of merchandise and services.
- ❖ Consumers need to be able to make sure they are comparing items of similar quality.
- ❖ Consumers need to understand and carefully consider their options, including why or why not to buy something.
- ❖ Consumers need to be cautious if they pre-pay for their funeral and burial expenses.

NCRA

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August 4, 1999

Donald Clark, Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Ave., N.W.
Washington, DC 20580

Re: 16 CFR Part 453

Dear Mr. Clark:

This letter is submitted in response to the Commission's Federal Register Notice (the "Notice") soliciting comments on the overall costs, benefits and the continuing need of the Funeral Rule. The Notice also requested comments on whether the rule should be modified to broaden its scope to include non-traditional providers of funeral goods or services; revise or clarify the prohibition on casket handling fees; or prohibit non-declinable funeral fees.

North American Cemetery Regulators Association

The North American Cemetery Regulators Association ("NCRA") appreciates the opportunity to comment on the Notice. The NCRA supports the Federal Trade Commission's (the "Commission") endeavors to enhance consumer protection by prohibiting certain misrepresentations, certain deceptive or unfair industry practices and by requiring itemized price information.

Overlap or Conflict with State or Local Laws or Regulations

In general, we are not aware of specific conflicts between the Funeral Rule and state laws and regulations, but there may be significant industry confusion about how to assure compliance with both federal and state requirements. Duplicative or conflicting regulation does not serve an effective purpose and some overlap exists. Overlap may become even more of an issue if the rule is expanded.

Executive Committee

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It is our general observation that while most issues involved with funerals and burials tend to be local in nature, trends in the death care industry are spreading faster than ever before. As a result, we believe that local regulation will be the most effective and targeted. Furthermore, education coupled with enforcement are the key ingredients in regulating inappropriate industry practices. Thus, we believe that the rule should recognize state's rights but strongly encourage the adherence to uniform and consistent national and international regulatory efforts.

We recommend retention of the opt-out provision set forth in Section 453.9. Although we are not aware of a state application to date, this provision should help encourage stronger state regulation in these areas. The Commission should be allowed to determine that the Funeral Rule shall not be in effect in a particular state when an overall level of protection to consumers exists in that state which is equal to or greater than the protection provided by the Funeral Rule. We support the existence of minimum standards and guidelines in certain areas, but each state should be able to regulate the death care industry in the manner they deem necessary and appropriate.

General Comments

State regulators are mindful that consumer protection is the most important part of our mission. It is our priority. First, some general comments:

- Consumers should be given some explanation of the available choices and options and have the information necessary to make informed decisions.
- Consumers should be able to avoid purchasing merchandise and services that they don't want or need.
- Consumers should receive an itemization and description of funeral merchandise and services selected from all vendors selling merchandise or services to the public. The disclosure must include the price of each item of merchandise or service selected. This information should be available prior to any purchase commitment.
- Disclosure requirements will not address all types of misrepresentations and unfair or deceptive industry practices.
- Consumers may have limited access to competing vendors, especially in rural areas. The focus of the rule should be on making sure that consumers are able to determine and select the merchandise and services that they want. The success of disclosure requirements should not be judged by their ability to drive down the average price of a funeral or burial. Consumer complaints are a better standard for judging consumer awareness and satisfaction. Although our funeral and burial customs have and will continue to change over time, people are accustomed to buying certain types of funeral merchandise and services in keeping with local traditions and history. That may explain why pre-need arrangements have not tended to bring down the price of funerals. Pre-need arrangements allow a longer period of time to finance the cost of the funeral and burial.

- Price information is critical. At the same time, complete price information of all items offered for sale by a facility may not be all that helpful in facilitating price comparisons. Most consumers will go through a process of selecting specific items of merchandise and services that they desire, such as a 20-gauge casket. After a consumer determines the specific item of merchandise or service they want, the other price information is no longer immediately helpful and may only serve as a reminder of the choices presented by the facility.
- Today's consumers are more sophisticated than ever and understand that products and services come in different price ranges. Consumers must also understand that there are different types of merchandise and services available and that most of them are optional purchases. Consumers may not know the right questions to ask in order to decide which price range will provide the quality or type of item or service they desire.
- If the sale of products or services in the death care industries needs to be regulated, the identity of the seller is irrelevant. We support functional regulation focused on the product or service being regulated.

Meaningful disclosure should be the core method of protecting consumers. Inadequate knowledge, the general lack of sophistication regarding merchandise and services relating to funeral, cemetery and cremation merchandise and services, remains the key problem facing consumers, as these purchases occur infrequently during a person's lifetime and do not become routine or common. The Funeral Rule does not appear to have addressed or eliminated this lack of frequency or awareness about the fundamental elements of making funeral and cemetery arrangements.

We hope you will consider the possibility that creation of a disclosure brochure that vendors must provide to prospective consumers may be of greater benefit to cost-conscious consumers or consumers who want to do comparison shopping than a general price list. A brochure would help consumers better understand their choices and options. The NCRA does not have a brochure available for reference. A copy of a brochure distributed by the California Department of Consumer Affairs is attached for your information.

Conclusion

Rules and regulations must be revisited regularly to ensure that they reflect the changing marketplace. The death care industries have experienced dramatic changes in recent years. If any proposed revisions involve the cemetery industry, we are likely to have specific comments.

The association appreciates the opportunity to express its views on these matters, and we hope that you will find our comments helpful. Since the Notice requested that comments be submitted in electronic form, an email copy of this letter is also being sent.

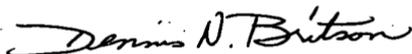
Donald Clark

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August 4, 1999

The attachment is available at <http://www.dca.ca.gov/cemetery/>. If the NCRA can provide any further information or analysis, please contact us.

Sincerely,



Dennis N. Britson, President

DNB:jr

Attachment

cc: NCRA Membership

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Iowa Department of Public Health

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Dubuque, IA 52001

Jack M. Springer
Executive Director
Cremation Association of North America
401 N. Michigan Avenue
Chicago, IL 60611



Home

Consumer Guide to Funeral & Cemetery Purchases

Complaints

California Laws

- ▶ Who Has the Right to Make Decisions
- ▶ Cemetery Law
- ▶ Funeral Law
- ▶ New Laws **ESB**

Forms

Licensing

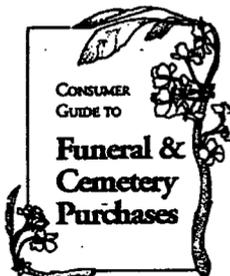
- ▶ Information
- ▶ Applications

Referral Numbers

FTC Funeral Rule

Cemeteries and Funeral Plans

The death of a loved one is undoubtedly the most traumatic experience any of us will ever encounter. The California Department of Consumer Affairs has developed the following guidelines to assist you in making the difficult decisions about funeral and cemetery arrangements for yourself or someone close to you. By asking the right questions, comparing prices and services, and making informed decisions, you can make arrangements that are meaningful to your family and control the costs for yourself and your survivors.



The Department licenses, regulates, and investigates complaints against California funeral establishments, funeral directors, crematories, and the nearly 200 private cemeteries in the state.

Legal Requirements

Disposition Arrangements

The California Health and Safety Code lists the persons who have the right to make decisions about disposition arrangements after an individual's death unless other written instructions are left: (1) an attorney-in-fact under a durable power of attorney for health care, (2) spouse, (3) adult children, (4) parents, and (5) other surviving competent adult kin. *Note: Exceptions may apply in certain situations.* You have the right to select a different person to make the decisions about your arrangements, if you wish. You may wish to consult with an attorney about including such instructions in your will or in another written document, such as a durable power of attorney for health care. Be sure to provide copies of your instructions to family members and keep your own copy in a handy place.

Prices

The law requires funeral establishments to quote prices over the telephone and to give you a general price list (GPL) and a casket price list (CPL) when you inquire in person about arrangements and

prices. If the funeral establishment sells outer burial containers, it must also provide you prices for those containers, either as part of the GPL or on a separate price list. For more information, see Price List Requirements.

When you contract for services with a funeral establishment, the law requires the funeral establishment to give you an itemized statement of your final choices, including estimates of costs which are unknown at the time. The statement must also include charges for outside vendor services that are arranged by the funeral establishment and for which the funeral establishment will make cash advances, such as flowers, clergy honoraria, newspaper notices, music, etc. Make sure the statement includes *only* those items you have selected. If you have chosen a funeral package, make sure the statement describes all goods and services included in the package. Get a total dollar amount in writing before you sign the contract.

The law allows a funeral establishment to set a *nondeclinable fee* for professional services. This fee may cover such services as the funeral director's time spent (a) helping you plan the funeral, (b) making arrangements with a cemetery or crematory (or other funeral establishment if the body will be shipped out of the area), (c) obtaining the death certificate and other required permits, and (d) submitting the obituary, and "unallocated overhead," which includes taxes, insurance, advertising, and other business expenses. You must pay this fee, as well as the cost of the specific funeral goods and services you select.

It is illegal for a funeral establishment to charge a handling fee if you wish to use a family-built casket or purchase one elsewhere; however, the casket must meet the cemetery's standards. It is also illegal for funeral establishment staff to make false claims about the preservative qualities of a casket or to charge contagious disease fees or fees for protective clothing for staff.

Embalming

The law does not require embalming, unless disposition will not occur within 24 hours and the body will not be refrigerated. (See exception under *Home Death Care*.) As a practical matter, however, you may wish to authorize embalming if there will be a delay before a public viewing period. (NOTE: A coroner may require embalming in certain circumstances.)

Cremation

The law does not require the purchase of a casket before cremation. (A combustible cremation container is required. See *Cremation*.)

Burial

Vaults or grave liners are not required by law, but cemeteries may have their own policies requiring them, since they keep the ground from settling after burial and make mowing and maintenance easier. Typically, vaults completely surround the casket in concrete or other material. Grave liners cover only the top and sides. Neither is designed to prevent the eventual decomposition of human remains.

Home Death Care

The law does not prohibit consumers from preparing their own dead for disposition. If you choose to do this, you must file with the local registrar a properly completed *Certificate of Death*, signed by the attending physician or coroner, and obtain a *Permit for Disposition* before any disposition can occur. You must also provide a casket or suitable container and make arrangements directly with the cemetery or crematory.

(NOTE: With permission from the coroner, human remains may be kept at home until disposition without embalming or refrigeration; however, decomposition will proceed.)

Coroner Fees

California law permits coroners to charge for certain services. Fees vary by county.

Retail Casket Sellers

State law requires retail casket sellers, upon beginning any discussion of prices, to give customers a written price list of all caskets, alternative containers, and outer burial containers normally offered for sale. In addition, if customers ask for it in person or by telephone, the outlet must give them a written statement identifying caskets or containers by price, thickness of metal, type of wood, or other construction, and by interior and color. Price, thickness, construction, and color information must also be included on a tag conspicuously attached to each casket. Prior to a sale, the seller must provide the buyer an itemized statement of all costs involved.

Retail casket sellers may not legally arrange funerals or perform any other functions of a funeral establishment.

CAUTION: Retail casket sellers are not bound by the state laws or regulations that govern funeral directors, funeral establishments, and cemeteries, nor are they regulated by the federal government. Before doing business with them, check their complaint histories with your local district attorney and Better Business Bureau.

Deciding in Advance

For a loved one . . .

While making such decisions is difficult at any time, planning in advance for the death of a loved one can relieve you of that responsibility at the time of death, when you may be emotionally vulnerable. Take time now to discuss these matters and find out what your loved ones want.

For yourself . . .

Planning in advance for your *own* death can spare your loved ones the anguish of making difficult decisions while in a state of grief. Be sure to discuss your wishes with your family. You may also wish to consult an attorney on the best way to ensure that your wishes are followed.

You can make arrangements directly with a funeral establishment or through a memorial society. Memorial societies provide information about funerals and disposition but do not offer funeral services themselves and are not regulated by the state. To locate a funeral establishment or memorial society, ask friends and relatives for referrals, and check the telephone book yellow pages.

(NOTE: Many funeral entities that include the word "society" in their names are for-profit businesses. If a society's nonprofit status is important to you, you should confirm it prior to making arrangements.)

Check License Status

To be sure that the funeral director, funeral establishment, crematory, and *private* cemetery are licensed by the state and in good standing, call (800) 952-5210/TDD (800) 326-2297.

(NOTE: The state licenses and regulates private cemeteries, not those operated by religious or fraternal organizations; cities, counties, or cemetery districts; the military; Native American tribal organizations; or other groups. If you don't know who regulates the cemetery, ask the manager.)

Compare Prices and Services

First, visit and inspect several funeral establishments and compare services offered, restrictions, rules, and prices. Then, decide how much you want to spend. If you buy a casket at a retail outlet, be sure to ask if the outlet will deliver it or if you must pick it up. Also compare prices at several cemeteries and ask about their endowment care funds (see *Glossary of Terms*). If a funeral establishment or cemetery is not being maintained to your

satisfaction, take your business elsewhere.

Prearrangement

You may wish to decide about your arrangements in advance but not prepay for them. Keep in mind that over time prices may go up and businesses may close or change ownership. It's a good idea to review and revise your decisions every few years, and you should make sure your family is aware of your wishes. Put them in writing, give copies to your family members and your attorney, and keep a copy in a handy place. (Don't keep your only copy in a safe-deposit box. Your family may have to make arrangements before the box can be opened—for example, on a weekend or holiday.)

Prepayment Options

If you do decide to prepay for funeral and/or cemetery services, you have several options. *(NOTE: These are options, not recommendations. Be sure to carefully compare the advantages and disadvantages of each—and consider consulting an attorney—before making any decisions.)*

- **Preneed Trust Contracts** – Decide on the funeral and cemetery services you want, sign contracts that fully describe those services, and pay a set amount into a trust administered by the funeral establishment or cemetery. There will usually be some costs that *cannot* be prepaid. Services such as opening and closing the grave are not usually part of the preneed contract and must be paid at time of need. *(NOTE: Be sure that your contract includes a cancellation clause, in case you change your mind later. Most cancellation clauses require you to pay a penalty, usually 10% of the total cost.)*

Suggestions:

- Ask for a **guaranteed price plan**. This protects you and your family from future price increases. (With a nonguaranteed price plan, your survivors may have to make up the difference in cost.) However, even with a guaranteed price plan, some items or services will probably have to be paid at the time of need.
- Make sure the funds in your preneed trust increase in value, and find out where the money is being invested and who the trustees are. You may receive an annual statement of earnings, which may be required to be reported as interest income on tax forms. Also, be sure that the plan includes provisions for your survivors to receive any funds that remain after the arrangements have been carried out.

- Find out if you have to pay the entire amount into the trust up front or if you can pay over time. Ask if there is a penalty for late payments.
 - Ask if your funeral arrangements can be transferred to another funeral establishment, or if the cemetery will buy the property back if you move out of the area.
 - To guarantee prices of cemetery goods, such as a vault or a marker, buy them and have the cemetery store them until they are needed. This is called "constructive delivery." There is no provision in law for constructive delivery of funeral goods.
- **Savings** - Earmark a portion of your savings for your funeral expenses, and ensure that your family members and attorney are informed and that provisions are made for your survivors to withdraw the funds at your death. You can change your mind at any time.
 - **POD Account** - Establish a Pay On Death or POD Account with your bank, designating the funeral establishment as the beneficiary of funds upon your death. Be sure to inform family members, the funeral establishment, your chosen executor, and your attorney of the provisions of the account. POD accounts may involve service fees, and interest earned is taxable. They may be canceled without penalty. *(NOTE: The funeral establishment is not required to pay any excess funds to your survivors.)*
 - **Life Insurance** - Buy life insurance equal to the value of the funeral and arrange for your beneficiary (a family member or friend) to handle the arrangements in accordance with your stated wishes. *(NOTE: If the costs exceed the amount of your policy, your survivors will have to make up the difference.)*
 - **Funeral Insurance** - Buy funeral insurance through the funeral establishment, which becomes your beneficiary. You preselect the casket, plot, etc., and the price may be guaranteed. If the price is guaranteed, the funeral establishment cannot charge your relatives more than the contract states, even if prices rise. *However, it can keep any funds remaining after the arrangements have been carried out.*

Burial

If you choose traditional burial, you will need to purchase a plot (unless you are eligible for burial at no cost in a national cemetery). Prices may vary widely between different cemeteries and between different locations in the same cemetery. There is also a fee for.

opening and closing the grave, and you will probably be required to buy an outer burial container such as a grave liner or vault to help protect and stabilize the casket. In addition, there is usually a separate endowment care fee for maintenance and groundskeeping.

Burial in a mausoleum (entombment) involves purchase of a crypt, opening and closing fees, and charges for endowment care and other services.

Purchasing Items Elsewhere

If you purchase a casket or alternative container from a source other than the funeral establishment, the law prohibits the funeral establishment from charging a "casket handling" fee; however, your purchase must meet the standards set by the cemetery. Remember to shop wisely, since retail casket outlets are not bound by the same laws or regulations that govern funeral directors, funeral establishments, and cemeteries. If purchasing items in advance, insist that any monies surrendered be placed in a trust, and be sure to get a copy of the trust agreement.

If the cemetery requires outer burial containers to minimize ground settling, you may have to buy a grave liner or vault. You do not have to buy the outer container from the cemetery; however, a liner or vault purchased elsewhere must meet the size, shape, and material standards set by the cemetery.

You may purchase a marker or monument from another source, but it also must meet cemetery standards, and the cemetery may not charge a setting fee if the monument company sets it for you. Be sure to review the rules and policies of the cemetery *before* you purchase. This can help avoid misunderstandings and can assist you in making your decisions.

Multiple-Depth Graves

You may arrange to be buried in the same grave as your spouse or other family member, but only if you buy a multiple-depth grave. There are special fees for opening and closing a multiple-depth grave.

Cremation

California law requires written acknowledgment of the following disclosure when cremation is to take place:

The human body burns with the casket, container, or other material in the cremation chamber. Some bone fragments are not combustible at the incineration temperature and, as a result, remain in the cremation chamber. During the cremation, the contents of the

chamber may be moved to facilitate incineration. The chamber is composed of ceramic or other material which disintegrates slightly during each cremation, and the product of that disintegration is commingled with the cremated remains. Nearly all of the contents of the cremation chamber, consisting of the cremated remains, disintegrated chamber material, and small amounts of residue from previous cremations, are removed together and crushed, pulverized, or ground to facilitate inurnment or scattering. Some residue remains in the cracks and uneven places of the chamber. Periodically, the accumulation of this residue is removed and interred in a dedicated cemetery property, or scattered at sea.

If cremation is chosen, a written authorization must be signed before cremation can proceed. This must be done by the person(s) having the right to control the disposition of the body. This authorization, or a separate contract, indicates the location, manner, and time of disposition of the remains and includes an agreement to pay for the cremation, for disposition of the cremated remains, and for any other services desired. (If you wish to arrange and prepay for your own cremation, you can legally sign the *Authorization for Cremation* form yourself.) In addition, a burial/cremation permit (*Application and Permit for Disposition of Human Remains, VS 9*) must be issued by the county health department. The funeral establishment usually arranges to obtain this permit as part of its services. California law permits the person authorizing the cremation to be in attendance if he or she wishes, and some facilities may be able to accommodate more than one family member. Check with the crematory for its policies.

A casket is not required for cremation by California law, but a combustible cremation *container* is. The container must be one that can be closed and is leak-resistant. A cardboard box constructed for this purpose is acceptable. You do not have to buy the container from the funeral establishment or crematory, but it does have to meet the standards set by the crematory.

You should make a decision about removing all personal possessions of value, such as jewelry or mementos, before the body is taken to the crematory. Pacemakers, most prostheses, and mechanical or radioactive devices or implants must be removed by authorized funeral establishment staff prior to cremation, as they could injure crematory personnel or damage equipment.

By law, all cremations must be performed individually, *unless* a multiple cremation is authorized in writing *and* the cremation chamber is capable of multiple cremations. (*NOTE: Only a few crematories have this capability.*)

After the cremation has been completed and the cremation chamber has cooled, the remains are swept from the chamber, processed to a uniform size, and placed in a sturdy plastic bag sealed with an identification disk, tab, or label. The bag is then placed in an urn or other container you have selected.

Disposition of Cremated Remains

In California, you may choose any of the following methods of disposition of cremated remains:

- Placement of the urn in a niche columbarium or mausoleum - there may be additional charges for endowment care, opening or closing, recording, flower vase, nameplate, and urn.
- Burial of the urn in a plot in a cemetery - there may be additional charges for endowment care, opening or closing, recording, urn, outer burial container, flower vase, and marker.
- Retention of the urn at your residence - the funeral establishment or crematory will have you sign the *Permit for Disposition* showing that the remains were released to you and will file it with the local registrar. You may not remove the cremated remains from the urn, and you must arrange for their disposition upon your death.
- Storing of the urn in a house of worship or religious shrine if local zoning laws allow.
- Scattering in areas of the state where no local prohibition exists and with permission of the property owner or governing agency. The cremated remains must be removed from the container and dispersed into the soil, or buried, so they are not distinguishable to the public.
- Scattering of the remains in a cemetery scattering garden.
- Scattering at sea, at least 500 yards from shore (this also includes inland navigable waters, except for lakes and streams).

Cremated remains may not be transported without a permit from the county health department, and they may not be disposed of in refuse.

Scattering

Cremated remains may be scattered as described above by a licensed cemetery, cemetery broker, crematory, registered cremated remains disposer, funeral establishment staff member, or the family. ALL cremated remains must be removed from the container for scattering. Avoid inhalation of the dust from the cremated remains, since there may be health risks. The county health department must issue a *Permit for Disposition*, and boat/aircraft operators must notify the U.S. Environmental Protection Agency after scattering.

State law requires cremated remains disposers who scatter by air or boat to post copies of their current pilot or boating licenses and the addresses of their cremated remains storage areas at their places of business. The law also requires disposers to conduct scatterings within 60 days of receipt of the remains, unless the person with the right to control disposition is notified in writing of the reason for the delay.

Special Circumstances

Death Out of State

Burial - If death should occur away from the city where burial is to take place, you will need to have the body shipped using the coordinated services of a funeral establishment in each city. (The body must be embalmed prior to shipping; if embalming is not possible, the body must be shipped in an airtight casket or transportation container.)

Cremation - You can arrange for cremation to take place in the distant city and shipment of the cremated remains to you.

Death Out of the Country

If death should occur in a foreign country, the U.S. Consulate in that country can assist in making arrangements for the return of the body or for its local disposition. You will usually be able to obtain English translations of the death certificate and other documents through the nearest U.S. Embassy or Consulate.

Donation for Medical Purposes

If you wish to donate your body to a medical school for educational or research purposes, you will need to make arrangements with the school well in advance. It is a good idea to check with the school every few years, since procedures and needs may change. By law, the school is responsible for costs of final disposition.

Price List Requirements

A sample General Price List is included in the 1994 booklet *Complying with the Funeral Rule*, available from the Federal Trade Commission. In addition, you may wish to compare GPLs from several funeral establishments in your area. Although additional services may be included, at a *minimum*, the GPL must include the *price* of each of the following basic services provided by the funeral establishment, along with the *date* the prices are effective and a *description* of the services included:

- Forwarding remains to another funeral establishment—may include embalming, removal of remains, minimum service of staff, necessary authorizations, and local transportation.
- Receiving remains from another funeral establishment—may include minimum service of staff and transportation of remains to mortuary.
- Direct cremation—may include basic services of funeral director and staff, a proportionate share of overhead costs, removal of remains, necessary authorizations, and cremation.
- Immediate burial—may include basic services of funeral director and staff, a proportionate share of overhead costs, removal of remains, and local transportation to cemetery.
- Basic services of funeral director and staff, including overhead.
- Transfer of remains to funeral establishment—a flat fee may apply weekdays, nights, weekends, and holidays within a specific area, with mileage charges for transportation outside the area.
- Embalming—must include the following statement:
Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial.
- Other preparation of the body—services may be priced individually and may include dressing, cosmetizing, casketing, hair care, post-autopsy care, refrigeration, and reconstruction/restorative arts.
- Use of facilities and staff for viewing.
- Use of facilities and staff for funeral ceremony.
- Use of facilities and staff for memorial service.
- Use of equipment and staff for graveside service.
- Hearse.
- Limousine.
- The *range* of casket prices that appear on the Casket Price List, including the price range for adult, infant/child, and rental caskets, and for alternative containers.
- *Either* individual outer burial container prices *or* the range of outer burial container prices if the funeral establishment sells them.

Complaints

If you have a complaint about a funeral establishment, crematory, or state-regulated cemetery, first try to settle it with management. If you can't resolve the issue, call the Department of Consumer Affairs at (800) 952-5210 or TDD (800) 326-2297, and request a complaint form. (Or you can [download a complaint form](#).) Many complaints are quickly mediated between the consumer and the licensee; more serious complaints require a thorough investigation.

and the Department will take action against the license, if warranted. For complaints you are unable to resolve with cemeteries that are not under state jurisdiction, contact an official of the managing organization. Unresolved complaints about retail casket outlets should be directed to the local district attorney.

Glossary of Terms

Casket/Coffin—A box or chest for burying human remains.

Cemetery Property—A grave, crypt, or niche.

Cemetery Services—Opening and closing graves, crypts, or niches; setting grave liners and vaults; setting markers; and long-term maintenance of cemetery grounds and facilities.

Columbarium—A structure with niches (small spaces) for placement of cremated remains in urns or other approved containers. It may be outdoors or part of a mausoleum.

Cremation—Exposing human remains and the container encasing them to extreme heat and flame and processing the resulting bone fragments to a uniform size and consistency.

Crypt—A space in a mausoleum or other building to hold cremated or whole human remains.

Disposition—The placement of cremated or whole human remains in their final resting place. A *Permit for Disposition* must be filed with the local registrar before disposition can take place.

Endowment Care Fund—Moneys collected from cemetery property purchasers and placed in trust for the maintenance and upkeep of the cemetery. The state monitors the fund and establishes the minimum amount that must be collected; however, the cemetery is permitted to collect more than the minimum to build the fund. Only the *interest earned* by such funds may be used for the care, maintenance, and embellishment of the cemetery.

Entombment—Burial in a mausoleum.

Funeral Ceremony—A service commemorating the deceased with the body present.

Funeral Services—Services provided by a funeral director and staff, which may include consulting with the family on funeral planning; transportation, shelter, refrigeration, and embalming of remains; preparing and filing notices; obtaining authorizations and permits; and coordinating with the cemetery, crematory, or other third parties.

Funeral Society—See Memorial Society.

Grave—A space in the ground in a cemetery for the burial of human remains.

Grave Liner or Outer Container—A concrete cover that fits over a casket in a grave. Some liners cover tops and sides of the casket. Other liners (vaults) completely enclose the casket. Grave liners minimize ground settling.

Graveside Service—A service to commemorate the deceased held at the cemetery prior to burial.

Interment—Burial in the ground, inurnment, or entombment.

Inurnment—The placing of cremated remains in an urn.

Mausoleum—A building in which human remains are buried (entombed).

Memorial Service—A ceremony commemorating the deceased without the body present.

Memorial Society—An organization that provides information about funerals and disposition but is not part of the state-regulated funeral industry.

Niche—A space in a columbarium, mausoleum, or niche wall to hold an urn.

Urn—A container to hold cremated human remains. It can be placed in a columbarium or mausoleum, or it can be buried in the ground.

Vault—A grave liner that completely encloses a casket.

For More Information

The following organizations can provide additional information on this topic:

Cypress College Mortuary Science Department 9200 Valley View Street Cypress, CA 90630-5897 (714) 484-7278	San Francisco College of Mortuary Science 1598 Delores Street San Francisco, CA 94110 (415)824-1313
California and Hawaii Federation of Funeral & Memorial Societies P.O. Box 92313 Pasadena, CA 91109-2313 (626) 683-3545	Funeral and Memorial Societies of America P.O. Box 10 Hinesburg, VT 05461 (800) 765-0107
Funeral Service Consumer Assistance Program (FSCAP) P.O. Box 486 Elm Grove, WI 53122-0486 (800) 662-7666	
Federal Trade Commission Office of Consumer & Business Education Washington, DC 20580 (202) 326-3650 (recording)	Local District Attorney or Consumer Affairs Office (See Government section of telephone book white pages)
Association of California Cremationists P.O. Box 7137 Fullerton, CA 92634-7137 (714) 525-4505	California Funeral Directors Association 347 Main Street Placerville, CA 95667 (800) 255-2332
California Mortuary Alliance 1116 24th Street Sacramento, CA 95816 (916) 448-5581	Conference of Funeral Service Examining Boards P.O. Box E Huntsville, AR 72740 (501) 738-1913
Cremation Association of North America 401 N. Michigan Ave. Chicago, IL 60611 (312) 644-6510	Interment Association of California 1116 24th Street Sacramento, CA 95816 (916) 441-4533
International Cemetery and Funeral Association 1895 Preston White Drive, Suite 220 Reston, VA 20191 (800) 645-7700	National Funeral Directors Association 13625 Bishop's Drive Brookfield, WI 53005 (800) 228-6332



128 Broadway Ave. - Pueblo, Co. 81004
 Telephone (719) 542-1984
 Fax (719) 542-1988

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April 13, 2000

Senator Chuck Grassley
 135 Hart Senate Building
 Washington D.C. 25010-1501

RE: Senate Special Committee on Aging, Funeral Industry Hearings

Dear Senator Chuck Grassley:

As Chairman of the Senate Special Committee on Aging, I feel I have some valuable information to share that you may find useful. The decisions you and the committee are making will affect every citizen in this country at one time or another and I therefore feel my correspondence will be of some help to you.

I strongly agree with your press release of April 11, 2000. The need for the consumer to compare the prices as well as the personnel and professionalism of death care providers has never been greater. The more information a consumer can acquire from any reliable source the better he or she will be able to make some difficult decisions at a stressful time.

Your press release of April 10, 2000 does not do, for the most part, any of us any good. Your information about where and to who to complain may be useful, but, the rest of your information is far too one sided. To simply state some abuses in the industry and not inform the public as to their limited scale is grossly unfair. I would not attempt to deny that abuses do exist. Abuses exist in every arena of our society and you need look no farther than your own profession to see some of the most damaging.

A free market system will provide for the elimination of most abusers in our industry. A quick look at the stock prices and Wall Street analysis of the publicly traded death care companies will prove this to be true. The consumer is rejecting the idea of large corporate entities, driven strictly by profits, caring for them and their loved ones in great numbers. However, as the average American is personally involved with a death care provided only once every twenty years, this elimination is extremely slow. More consumer information is the best way to speed this process.

The high-pressure sales tactics used in our industry are extremely troubling. I could not agree with you more in that this abuse in our industry needs to be addressed immediately. The use of "sales people" to counsel grieving families must be stopped if we are to salvage any respectability in the death care profession. Death care must stop the self-directed evolution from a service industry to a sales industry. The consumer is already rejecting this evolution as indicated by the migration away from the large corporate funeral conglomerates.

The single, simplest thing you and your committee can do to help our industry as well as the consumer is to find a way to prohibit the sale of anything connected to the death care industry on commission. This simple act would not only eliminate the pressure placed on consumers to purchase goods and services not needed, it would also force reputable death care providers to pay an honest living to their employees and to hire the best, most consumer oriented funeral directors to help perpetuate the success of their business. A system for the tracking of this information already exists. The Internal Revenue Service provides for the exchange of such commission information on a tax return. Someone listing their occupation as death care related and having any income in box fourteen on a tax return should signal an abuse of this kind. Swift and sure enforcement could follow.

April 13, 2000

As our society continues to devalue human life, it becomes more and more difficult to convince the consumer of the value of what we do. There is no denying the fact that funeral related goods and services are expensive. While the products and services could be delivered to the consumer at a substantial savings, our society still demands a certain level of professionalism and decorum. Removal and care for a deceased could be done only on weekdays during business hours. We could transport deceased individuals in old pick up trucks instead of eighty thousand dollar Cadillacs. We could meet with families and conduct funerals in metal buildings with dirt floors. All these things would certainly reduce the costs. However, I am certain you and all decent thinking consumers would reject this type of treatment for yourself or a loved one. As William Gladstone once said "Show me the manner in which a nation or community cares for it's dead and I will show you with mathematical exactness the tender sympathies of it's people, their respect for the laws of the land and their loyalty to high ideals."

I sincerely hope my thoughts and suggestions will help in some small way. Feel free to contact me should you need any more information or feel I can be of help to you and the committee in any way.

Although not a constituent of yours, I do have strong family ties to the state of Iowa. My ancestors homesteaded in the Oxford, Iowa area and my wife's family still lives in and around the Guthrie Center Area. My older brother, Jeff Cotter, was general manager of Cargill's corn milling plant in Eddyville and, while living in Ottumwa, hosted a fundraiser for you, which you attended, in their home. He and his family are now living in Minneapolis where he works for Cargill in the corporate offices. They send their best personal regards.

Respectfully,



Brian L. Cotter
Owner/President
Davis Mortuary

A little note from the desk of

Grundy Memorial Chapel, Inc.
Angela Grundy-Sallee, Funeral Director/Manager
2357 Dr. Martin Luther King Jr. Street
Indianapolis, Indiana 46208-5521
(317) 925-2323
e-mail AMSALLEE@aol.com

April 16, 2000

Senator Chuck Grassley
135 Hart Senate Office Building
Washington, DC 20510-1501

Dear Senator Grassley:

I would first like to extend my thanks to you and the committee for allowing those present at the recent hearings to voice their views and opinions of the industry to which I am employed. I recently submitted a comment to LOWELLMMA@aol.com for our electronic newsletter. I also attempted to forward a copy to Senator Breaux, Senator Bayh and yourself for your review and records. Since the e-mail was returned to me as "un-deliverable", I decided to forward a hardcopy to you via the U.S. Postal System. This is just a brief summary of my views, feelings and opinions after watching the hearings on C-Span and via the Internet. I hope that this can shine yet another light on the situation and assist you with any further dealings with the funeral industry. If I can be of any help in the future, please do not hesitate to contact me via mail, telephone or Internet.

Sincerely yours,


Angela Grundy-Sallee

Subj: My Personal Comments on the Recent Senate Hearings on the Funeral Industry
Date: 4/16/00 12:09:48 PM Pacific Daylight Time
From: AMSALLEE
To: senator@breaux.senator.gov
To: senator@grassley.senator.gov
To: senator@bayh.senator.gov

Senators Grassley, Breaux and Bayh (for the record):

This is a copy of comments I sent to LOWELL MA@aol.com. He had contacted me via e-mail and telephone to discuss the hearings. I took the time to jot down a little bit (a lot) and send it to him. I am forwarding my comments to you so you will know what I had to say also. I hope that I didn't put my foot in my mouth - but I am a person that speaks from the heart and with true conviction. I am not in this business for the MONEY - I am in it for a true dedication to the families I serve, as well as a dedication to my fellow colleagues.

Now that the Senate Hearings are behind us, let us look at them a little closer and find something positive to build on. Many topics were covered in the hearings from cremation trust violations to leaking sealer caskets; abandoned cemeteries to pushy preneed sales people; priests accusing other priests of being on the take to the statement that all funeral directors are crooks. I was not totally shocked at the things I heard but more disappointed that no one was there to tell them the flip side. All that goes wrong in the industry is not the fault of the Funeral Director. So what does all of this really mean to me?

Everyone in America falls under something we refer to as the Constitution of the United States. In this Constitution there is a thing called Freedom of Speech. We witnessed this being exercised on April 10th and 11th in Washington D.C. Tears were shed and fingers were pointed but one fact still remains "I am very proud to be what I am - a licensed funeral director."

I would like to thank Senator Grassley and Senator Breaux for allowing the consumers and others to voice their opinions on the funeral industry. I am saddened by some of the things I heard that are occurring within my profession, however, on a more personal note I am so proud not to be a participant of any bad or deceptive practices in this profession that serves families at a time when they truly need to be served.

Along with my father, a 52-year veteran in this industry, we represent the 87% that are family and/or independently owned. I do not hard sell or harass families to purchase preneed to meet any quotas or to add a bonus on my paycheck. I don't make repeat trips to families houses, attempting to add to a preneed or alter a preneed. I am a seller of funeral goods and services, totally in compliance with the FTC Funeral Rule, a rule that my firm follows to the letter. I am licensed in the State of Indiana where we have excellent preneed laws that were put in place to protect the consumer and are totally portable from firm-to-firm, state-to-state. I do not bribe ministers, priests, rabbis or any other members of the clergy to persuade business to my firm. I do not own a "secret" wholesale book with casket prices that aren't shared with the public. And I do not lie to families on what a sealer casket is used for.

I do, however, operate a business, a business that is allowed to sale Goods and Services and make a profit from these goods and services that I provide. I comply totally with the FTC Funeral Rule and other rules that govern my profession. I answer any question a potential client, family or consumer might ask me with regards to funerals, cremation, sealer and non-sealer caskets, etc. In my presentation, I discuss what a sealer casket is - a receptacle that has a rubber gasket locking mechanism, serving as a means to keep outside elements from entering such as air, water and soil. When I write a preneed contract, my families know that the money they are giving to my firm is being 100% trusted - guaranteeing them that ALL goods and services selected will be delivered at the time of their death - whether they die in Indiana or Florida.

I could go on and on about what I do and don't do - but I think you get the just of what I am saying. ALL FUNERAL DIRECTORS ARE NOT CROOKS. However, everyone involved in the funeral industry is not necessarily a good representative of the industry. There are many people out there selling funeral goods and services that are not licensed funeral directors, however, when all goes wrong it is the licensed funeral director that ultimately looks bad. I don't know what the laws of each State are but I know the laws in Indiana - and I am going to push to make sure only licensed funeral directors will be able to sell funeral goods and services. I would like to see the Nation as a whole push for the same thing. If you are selling in compliance with the rules and regulations of your profession, and have to place your license on the line when you do - I think there will be fewer incidents where a consumer is sold \$132,000 worth of goods and services. Trained salespeople are not what our industry needs - qualified and licensed funeral director is what our industry should insist on.

The 87% that I represent work 24 hours a day, 7 days a week, weekends and holidays. Very often when business is slow, paychecks end up being less or not at all. We don't get any kickbacks or added bonuses on our checks for SELLING; we get paid for providing a service. Our prices are what they are so we can keep our doors open - prices that are in compliance with the FTC Funeral Rule. I am not a Funeral Goods and Service Salesperson - I am a Licensed Funeral Director. We need to work harder to make our profession more professional and stop allowing people to treat it like a used car lot - saying whatever it takes to make the sale.

I hope that Senator Grassley and Senator Breaux realize that despite what they heard for two days in Washington - those incidents were the exception, not the rule. This industry is still to be considered one the most sincere and dedicated professions around - for those individuals that are sincerely dedicated funeral directors like myself.

Sincerely,

Angela Grundy-Sallee

Funeral Director/Manager - Grundy Memorial Chapel Inc.

District 7 Director - Indiana Funeral Directors Association (IFDA)

President - Metropolitan Morticians Association (MMA)

Communications Committee & Public Relations Sub-Committee Member - National Funeral Directors Association (NFDA)

April 13, 2000

Deputy Investigator Swamidoss,

I have been reading through various reports on the Hearing of the Senate Special Committee on Aging. I find that the lack of witnesses from the funeral service is alarming. Most of the people selected are well known as long time critics of funeral services. Many of the abuses that were reported in the area of cemeteries, crematories, and cremation societies. In the case of Father Henry Wasielewski in particular he alleges a few isolated instances of abuse and raves that all funeral homes are the same or worse throughout the country. I would like to offer our comments on some of the issues that were discussed.

It is unfortunate that the representative of the National Funeral Directors Association chose to vent his frustration rather than portray an accurate picture of funeral service. I am currently the President of the Independent Family Funeral Home Association (IFFHA), a regional group of funeral homes from the Great Lakes region. Our membership is a very good representation of the average funeral firm. Most of our member firms are small funeral homes serving 100 to 150 families each year. We adhere to our operating regulations imposed by state laws and Federal Trade Commission regulations. We provide the families we serve with our general price list, we explain the many options they have for services and disposition choices. We show them a wide range of caskets.

Some of the industry critics allege that funeral homes take advantage and pressure families we serve. However, if we were abusing families or overcharging them, families would simply choose the other firm in town, or one of the others in the surrounding communities, we would not be able to take care of them over and over through the years. Again a key word here is community, many of the families we serve are personal friends of ours, we serve them as we would want to be served with respect and compassion. Many funeral home firms have large investments in their firms building and equipment. The average total investment for a firm our size ranges from \$750,000 to \$2,000,000.00. Why would a firm jeopardize that much of an investment through unscrupulous business practices.

Let me add some background on our firm, Pray Funeral Home, Inc., of Charlotte, Michigan. Our firm was established in 1923 by my Grandfather and Great Grandfather. Since that time we have continued to serve the members of our community many of which are personal friends. Our community only has a population of approx. 8500 people. There is one other funeral home in our community, as well as many other firms in the surrounding small communities. The families of Charlotte have a number of choices when it comes to funeral service providers. Our firm has served many of the families in our community several times through many generations. The same is true for the other firms in our communities. That would not be the case if we did not provide honest and compassionate service to the community.

Preneed practices for most firms like ours are fair to both the consumer and the funeral home. In our preneed program, every preneed is portable, it has to be by state law in Michigan. If an individual or family wants to use the pre arrangement that we set up at another funeral home, they can. They can either cancel it and get their money back or we can transfer it all to the another funeral home for them.

In our area, most of the biggest abuses in pre arrangement and services to families come from corporate owned cemeteries. Just the other day a slick cemetery sales woman took advantage of a man we were serving. The cemetery demanded that the gentleman come to their offices to verify which space was his (didn't they have records that showed that?), and sign a paper authorizing them to open the mausoleum crypt (isn't his signed check enough authorization?). While he was there they hounded him to purchase a number of other things. In his confusion and emotional state over the loss of his wife, he did indeed authorize a payment plan for a number of things, including a casket for himself. The surprising part was that this gentleman had already purchased a casket for himself through a pre arrangement with our firm two years earlier.

In my conversation with him at the funeral home the next day he admitted that he thought he had already bought a casket in his pre arrangement, but he was confused while at the cemetery and signed the contract because the saleslady said "well just in case, let us help you get it taken care of." He told me that he thought the caskets were more expensive at the cemetery but the sales person "talked him into it." The casket the cemetery salesperson had sold him cost \$1860.00, and was comparable to a casket that we sell for \$990.00! Our cost for the comparable unit is \$495.00. That means that the cemeteries markup was almost 400%! In comparison, the casket he had purchased in his pre arrangement from our funeral home was a superior casket in both materials and design and only cost him \$1250.00 which he had already paid for in full, two year earlier. I was able to help this gentleman cancel the contract after talking with the salesperson and her manager, saving this gentleman \$1860.00! It is unfair that funeral homes should be painted as uncaring and unfair operators, when we have to deal with cemeteries pushing unneeded items on the grieving families.

Pray Funeral Home charges fair prices based on our expenses and a fair return on our investment. Most funeral homes have a sizable investment in their building, equipment and staff. The average return on the total investment is usually around 4%. Not the great numbers that critics like to imagine. Our service charges vary according to the service options our families select. Our service prices range from \$729.00 to \$3685.00.

The average markup on merchandise such as caskets ranges from 2 to 2.7 times of the wholesale cost. That converts to 200 to 270%, not the inflated figures our critics scream about. Our firm shows caskets ranging in price from \$250.00 to \$5995.00. The average price of a casket selected by our families is \$1926.00. Our cost of that casket is \$960.00 That is nowhere near the abusive markups that industry critics shout about.

Our firm and my family are not wealthy, we are not out to take advantage of our friends and neighbors. We are average citizens who provide a compassionate service to families who need help in the worst times of their lives. We are called on at all hours of the day night, weekdays and holidays. We are ready to serve our communities whenever and wherever the need arises. Yes we are compensated for our time, and out of that compensation we pay our sales tax, our Federal and State income taxes, our real estate taxes, our single business taxes, our social security taxes, our medical taxes, our unemployment taxes, our gasoline taxes, our personal property taxes, and in the end we even pay our estate taxes.

Our regional association (IFFHA) commissioned a national study through an independent research firm to determine the public's opinion of funeral service and funeral firms. The results were overwhelmingly positive for funeral service in general, and family owned funeral homes in particular. The overwhelming majority of the consumers stated that they were satisfied with services they had experienced. They stated that the services they received were both fair and valuable for them. They expressed a high degree of satisfaction with the funeral homes they had worked with. I would be happy to forward a copy of the results to our committee.

If I can be of further help or information. Please let me know at any time you may reach me at 517-543-2950 or through my e-mail or web site below.

Joseph E. Pray

<http://www.prayfuneral.com>
jpav@voyager.net



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 fax (314) 209-1289
 www.ogr.org

April 18, 2000

Cecil Z. Swamidoss, Deputy Investigator
 Special Committee on Aging
 G31 Dirksen Senate Office Building
 Washington, DC 20510

The Honorable Chuck Grassley
 United States Senator
 135 Hart Senate Building
 Washington, DC 20510-1501

Dear Senator Grassley:

I am writing on behalf of the International Order of the Golden Rule (OGR) regarding the Funeral Industry Practices hearings held on April 11, 2000, by the Senate Special Committee on Aging. I want to make it clear that, like the Federal Trade Commission, the funeral industry and the funeral service professional also has the consumer's best interests at heart.

As a professional association representing over 1,200 independent funeral homes, OGR is concerned with ensuring that consumers [our families] are well-served. In fact, OGR has consistently upheld the interest of the consumer since its founding in 1928, as our credo—"Service measured not by gold, but by the Golden Rule"—attests.

OGR supports the enforcement of penalties for disreputable funeral providers who function outside of the law and who are in business only for the purpose of personal gain at the expense of the families that rely upon them for assistance. Testimony such as that heard on the first day of the hearings demonstrates the need to distinguish reputable funeral providers from those who lack integrity and ethical standards.

Unlike corporate-owned funeral homes, Golden Rule funeral homes are independently owned and operated, many by families who have been in funeral service for generations and serve their communities proudly. Service has, therefore, been the driving force behind OGR as an association and its members. In addition to our **Standards of Ethical Conduct**, OGR has developed and regularly implements a number of measures intended to ensure that our member funeral homes maintain the highest of standards, including:

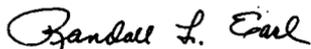
- **A grievance committee**, which responds to concerns from both consumers and members;
- **Family Contact**, a feedback program whereby families are asked to comment on the service performed by Golden Rule funeral homes. The funeral homes then are provided with reports, noting both praise and criticism, to assist in their continuous improvement efforts.

- A stringent **application/screening process**, to verify the integrity, quality and standards of a potential new member firm. The process requires both credit and business references, a random community (consumer) survey to determine the firm's reputation locally, an onsite peer inspection, and finally feedback from other OGR members in the applicant's region.

We commend you for recognizing that a majority of funeral service professionals are highly ethical and compassionate individuals who are committed to serving families. We hope that your committee's recommendations will not penalize those who have a history of excellent conduct.

Senator Grassley, thank you for the opportunity to inform your committee of OGR's position and actions on behalf of the consumer and the independent funeral home owner.

Sincerely,

A handwritten signature in cursive script that reads "Randall L. Earl".

Randall L. Earl
President
International Order of the Golden Rule



Humboldt Funeral Society

P.O. Box 856 • Arcata, CA 95518 • Phone: (707) 822-8599
 Fax (707) 822-1901

April 18, 2000

Re: The Funeral Rule

Senator Chuck Grassley, Chairman
 Senator John Breaux
 Senate Special Committee on Aging
 G31-Dirksen Senate Office Building
 Washington, D.C. 20510

Gentlemen:

I listened with great interest to the testimony presented before your Committee on April 10 and 11. I am responding to your invitation to present "testimony" during the two weeks you indicated the hearings will be held open.

I represent the 625 members of the Humboldt Funeral Society, one of the 120 consumer groups affiliated with Funeral and Memorial Societies of America. Our location is in a rural northern California county with a total population of about 150,000. We are 250-400 miles distant from the nearest urban cities, San Francisco and Portland, Oregon. Land and air transportation is sometimes uncertain due to weather conditions.

Senator Breaux expressed concern about the small number of complaints about the funeral industry in the GAO report. I can verify this may be partially explained by the fact that most of us truly do not know where to complain. It is very helpful to know that the FTC has a number one can call (given by Eileen Harrington). Our organization tries to help the funeral consumer, but being non-profit, we rely on volunteers and we need all the help we can get.

Within the last ten years, all mortuaries in our County have been purchased by conglomerates, five by SCI, and two by The Loeven Group. One mortuary remains independent. SCI also owns the largest cemeteries. All the mortuaries retain their local name, concealing the fact they are now corporate owned. A short time after ownership change, mortuary goods and services prices escalated - cemetery plots and services went up - aggressive sales staff began to target every elderly person for whom it could get a phone number - credit on a time payment plan vanished for those not able to pay cash. The friendly "home town undertaker" was gone, and funeral consumers in Humboldt County found themselves between a rock and a hard place. The SCI group has set up the

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 Senator John Breaux
 Senate Special Committee on Aging

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market as a "one stop to shop" mortuary to cemetery at a premium price. Our Society has an existing agreement with the Loewen Group establishments, which has remained "friendly", but we are constantly nervous with the public knowledge that this is a bankrupt corporation operating under Chapter 11, and wonder when that last rug will be pulled out from under us. The one independent mortuary is cordial, but obviously has no need to lower prices to compete, knowing that the funeral consumer literally has no place to go.

Here are a few examples of calls we receive from anxious purchasers of pre-need plans:

1. A couple purchased a contract for their final resting place from a SCI sales person, totaling the princely sum of \$7085 - note that this does not include mortuary charges. The contract is a document measuring 11" wide and 17" long, with small type on both sides, which was not read by the purchasers during the sales conference. On closer examination, the contract revealed that \$1696 of the total price is a "finance charge". Instead of "peace of mind", this couple opted to cancel by paying a hefty penalty.

2. A 65 year old woman was sold a pre-need plan by SCI while settling the account for burial of her husband. To get into the plot she already owned would cost her \$4685, \$1100 being "finance charges". Assuming a 65 year old woman can expect to live at least another ten years, it is obvious she could have invested her money to better advantage. Why was it necessary to burden her with a sales pitch during the first few days of her bereavement?

3. A 95 year old lady died, assuring her niece she had a policy with Neptune Society to "take care of everything". When her niece made arrangements, demand was made for an additional sum of \$79 for an urn to carry the cremains a distance of 30 miles from the crematorium to the scattering grounds. The provider refused to cremate the body until the niece gave them her credit card number, which she refused to do. The result was that the aunt's body remained in hostage for a week before resolution by taking her to a consumer society approved facility.

Working on commission, pre-need sales persons are akin to the proverbial car salesman - they "lowball" the victim, who often ends up buying everything but the kitchen sink to accompany the departed to the grave.

Senator Chuck Grassley
Senator John Breaux
Senate Special Committee on Aging

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Many of our callers are on low and very low incomes when called upon to make final arrangements for a parent or other relative. Barely scraping by themselves, they are examined, coaxed and badgered to come up with cash, a credit card, or as a last resort signing a payment agreement which burdens them for many years. There is no charity in the funeral business - and while the demeanor of many industry employees display empathetic sadness, there is very little sympathy.

On behalf of our members, we say yes indeed, the non-declinable fee needs to be done away with, cremation costs should be itemized, alternatives to costly funerals should be presented, the price list needs to be standardized, and cemeteries and all funeral-related vendors should be required to come under the funeral rule. Pre-need contracts need scrutiny for regulations to protect consumers. The FTC must step up enforcement of the funeral rule.

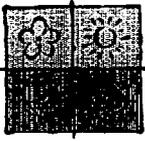
Thank you for the opportunity to tell your committee how the funeral industry operates in our community. As the conglomerates swallow up locally owned mortuaries and cemeteries, the consumer faces the problem of how to get into a hole in the ground without "going into the hole financially".

Sincerely yours,

HUMBOLDT FUNERAL SOCIETY

By 

Wilma W. Johnston, President
Board of Directors



WEBCASKETS

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Via E-mail: Cecil_Swamidoss@Aging.Senate.Gov

April 24, 2000

Cecil Z. Swamidoss, Deputy Investigator
Special Committee on Aging
D31 Dirksen Senate Office Building
Washington, DC 20510
FAX: 202-224-8860

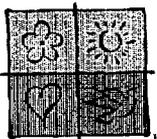
Re: Hearings on Funerals and Burials

WebCaskets.com, Inc. ("WebCaskets.com") respectfully submits these comments to the Special Committee on Aging (the "Committee") regarding its investigation of funeral and burial practices and the effectiveness of the Trade Regulation Rule on Funeral Practices ("Funeral Rule") and the Federal Trade Commission's ("FTC") enforcement thereof.

Founded in June of 1999, WebCaskets.com is one of the first Internet based nationwide companies allowing consumers to purchase funeral and burial merchandise online. The company allows consumers to purchase caskets, monuments, flowers and other death care related products and services online, in the privacy of their own home. WebCaskets.com allows consumers to plan a funeral from the comfort of their own home, on their own time schedule, with as much information as possible to make informed purchasing decisions. WebCaskets.com customers typically save 50% or more off local funeral home prices. WebCaskets.com is not owned by, associated or affiliated with any funeral homes or funeral home companies in any capacity.

During our first year of operation, WebCaskets.com has done extensive market research by actually talking to its customers and potential customers. In addition, we have had significant contact with funeral homes and cemeteries as arrangements are made to deliver the funeral merchandise that our customers have purchased. We are a firm believer in the power of competition to bring quality funeral and burial goods and services to consumers at reasonable prices. However, due to the unique structural characteristics of the death care industry, competition must be assisted by an improved and more vigorously enforced Funeral Rule.

We do not believe that the current Funeral Rule has been effective in enhancing competition. This is evidenced by the fact that funeral inflation has significantly exceeded general price inflation for most of the 1990's. It is also interesting to note that the price for an average funeral in North America is two to three times as high as the prices for average funerals in other western countries (the UK, France and Australia for example). We believe that with enhanced competition the average funeral price could be half what it is today.



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In order to enhance competition, WebCaskets.com makes the following recommendations to the Committee. Most of the recommendations could be implemented in an enhanced Funeral Rule which is more thoroughly enforced than the current rule.

Casket Handling Fees

Currently the Funeral Rule prohibits a funeral home from charging a casket handling fee and requires the funeral home to accept a casket purchased from a third party seller. Without this provision casket stores and internet companies ("Third Party Sellers") such as WebCaskets.com could not operate. However, funeral homes fight this rule in ways that we believe are not in the spirit of the original Funeral Rule. WebCaskets.com recommends the following changes to the Funeral Rule regarding casket handling fees.

The bundling of caskets and services should be eliminated where it has been clearly designed to eliminate competition from Third Party Sellers. In many cases it appears that funeral homes have raised their itemized prices and then constructed discounted packages that don't really offer the consumer any savings. These packages make it cost prohibitive for a consumer to purchase a casket from a Third Party Seller. These practices appear to be actively endorsed by the trade associations and the consolidators.

If bundling is allowed, an alternative is to require funeral homes to include at least one "package" that includes their lowest price casket. Also require that the funeral home cannot prevent the customer from substituting a casket from a Third Party Seller and selling or donating the low priced casket to charity. We have found that in many cases the consumer can still achieve significant savings by purchasing the package with the low cost casket and buying the casket they really want from a Third Party Seller.

Funeral homes should be restricted from using all deceptive practices such as lying to consumers about their experiences with caskets from Third Party Sellers. Funeral homes routinely tell customers that caskets from Third Party Sellers are not American made (not true), always arrive damaged (not true), won't fit the body, won't fit the grave, have the bottom fall off, etc. It takes a very determined customer to ignore these allegations given the emotional and time pressures that they are facing.

Funeral homes should be restricted from requiring their customer to come and physically inspect the casket before they accept the delivery. This is another tactic that funeral homes use to discourage customers from buying from a Third Party Seller.

Prevent funeral homes from reducing their prices to match a Third Party Seller price only when they are about to lose the sale. We certainly have no problem if a funeral home were to reduce all of their casket prices. However, we suspect that selectively matching prices is a strategy designed to drive Third Party Sellers out of business.

In complete fairness, less than half of our customers have reported being subjected to one or more of the above practices (although some have been subjected to all of them). However, we



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receive many phone inquiries or visits to our web site that never result in a sale. We believe that many of these sales were lost because of one or more of the above anti-competitive practices.

Merchandise supply issues:

In addition to the anti-competitive practices discussed above, funeral homes also attempt to restrict competition from Third Party Sellers by restricting their access to merchandise.

Funeral homes individually and through their trade associations have made it clear that they will stop buying from a manufacturer or a distributor who supplies a Third Party Seller. This makes it difficult for Third Party Sellers to operate on a large scale or to obtain product at reasonable prices. Most manufacturers and distributors actively support the prohibition on selling to Third Party Sellers. Many Third Party Sellers are forced to buy product "under the table" from cooperative funeral homes. If caught by the manufacturers, these funeral homes are "punished" and cut off from their source of product.

We urge the Committee to require manufacturers to sell to all suppliers- not just funeral homes. Absent this manufacturers should be restricted from "punishing" funeral homes that resell their product.

General Price List Issues:

Many of WebCaskets.com's customers have asked for help in planning the funeral or asked for recommendations as to which funeral home they should use. This is a difficult service for us to provide as the information contained in the general price lists are confusing to even experienced death care professionals. It is also difficult to obtain the general price lists unless the consumer physically visits each funeral home in their area. These difficulties greatly reduce the effectiveness of the General Price List in promoting increased competition. WebCaskets makes the following recommendations to improve the effectiveness of the General Price Lists.

Require a standardized General Price List designed by the FTC. Also require a standardized Casket Price List with manufacturer, model and description to allow easier comparison pricing. The standard price lists should have 4 sample funerals (low and average funeral, low and average cremation) to make for easier comparison. The standardized price list could also contain information about the funeral home, the address, hours of operation, size of facilities and actual ownership (is it family owned or owned by one of the consolidators?). The price list should also contain information as to how the consumer complains, for example the address and e-mail of the FTC, the local state regulators, and the home office of the consolidator.

Require the standardized price list to be provided to the FTC in an electronic format and have the FTC maintain a database of the prices for the public on the Internet. This requirement could be phased in to larger funeral homes first. For example require the funeral home chains to comply within six months, funeral homes which do over 200 funerals to comply within 12 months and all others within 18 months.



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Funeral homes should be required to respond to all telephone inquiries and when asked should fax a price list, including the casket price list. To reduce the cost of this, funeral homes should only be required to fax to local and toll free numbers.

Coverage of the Funeral Rule:

WebCaskets urges the Committee to support the expansion of the coverage of the Funeral Rule to include cemeteries, crematories, monument companies and third party merchandise suppliers such as casket stores and internet casket companies. Note that WebCaskets.com is not currently subject to the Funeral Rule. We believe that it is in the consumers best interest that all death care providers including ourselves be subject to similar rules.

It is possible that a subset of rules need to be developed for each segment of the death care industry due to their unique characteristics. However these rules should be very similar in order to promote competition and eliminate deceptive trade practices.

Cemeteries and Crematories

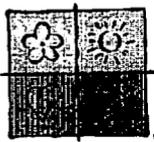
Cemeteries and crematories are the most likely candidates for inclusion in a modified funeral rule. Many of the same pricing abuses and deceptive practices seen in funeral homes are also seen at cemeteries. Any expansion of the Funeral Rule to cemeteries should include private, not for profit, religious and municipal cemeteries. This is necessary because many not for profit, religious and municipal cemeteries have adopted many of the same practices as private cemeteries and in some cases are managed by private cemetery companies.

With the growth of private cemeteries and consolidator owned cemeteries' pricing tactics have come to resemble the tactics used by funeral homes. Death care merchandise and services purchased from a cemetery is frequently marked up 500 percent. Price inflation on services such as the opening and closing of a grave have far exceed general price inflation. Also the expansion of combo operations (funeral homes built on cemetery properties, common with the consolidators) has increased the opportunities for anti-competitive practices.

Cemeteries should be required to provide standardized price lists in the same manner as funeral homes. The FTC should develop a standardized cemetery price list similar to the one discussed above for funeral homes.

Similar to the casket handling fee, cemeteries should not be allowed to charge access fees or otherwise restrict access when other vendors sell and install vaults, monuments, markers, or other death care merchandise.

Cemeteries should be required to charge the same for installation of markers and vaults purchased from an outside vendor, just the same as if they sold the merchandise. We have experienced cases where a cemetery charges \$100 to install a marker they sell versus \$900 to install one purchased from an outside vendor.



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Require cemeteries to allow other vendors to install vaults, markers and even perform services such as opening and closing of the grave.

Third Party Sellers

Third Party Sellers such as casket stores, monument companies and internet casket companies should be subject to the Funeral Rule. WebCaskets.com along with many other Third Party Sellers already voluntarily comply with the Funeral Rule.

The main aspect of the rule that affects Third Party Sellers is the General Price List and the Casket Price Lists. The General Price Lists that Third Party Seller use should clearly state any additional costs such as shipping charges, sales taxes and installation charges that a consumer will have to incur.

Pre-need Issues

WebCaskets.com does not offer funded funeral prearrangements because we do not believe that they are in the best interest of the consumers. However, we believe that third party sellers should be subject to the same pre-need rules as cemeteries and funeral homes.

The Committee and the FTC should develop consumer friendly model pre-need legislation. States should be given incentives to adopt and enforce the major elements of the model legislation.

We also recommend that the Funeral Rule be modified to require complete disclosure of various issues when selling a pre need policy, for example:

Is the contract cancelable and what amount is refundable?

Can the policy be transfer to another funeral home?

Are there other death care related expenditures that are not covered (such as flowers, obituaries, etc.)?

How are the funds secured? Trust or insurance? How are Trust funds invested, who is the trustee, etc.

State Law and Enforcement Issues

Enforcement and support of the Funeral Rule by the states varies significantly. We encourage the Committee to consider incentives that could be offered the states to enforce the Funeral Rule.

In addition some states have enacted legislation that restricts the intent of the Funeral Rule. 12 states prohibit the sale of a casket by other than a licensed funeral director or otherwise restrict

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the establishment of casket stores and Third Party Sellers. We urge the Committee to consider actions which allow the Funeral Rule to override state law in such obvious conflicts.

We appreciate this opportunity to provide comments to the Committee on this important issue. We are available to answer any questions or provide additional details regarding any of the above comments. Please feel free to call me at (949) 646-9863, Ext 228, fax at (949) 646-9865 or e-mail me at afrost@webcaskets.com

Very truly yours

A handwritten signature in black ink, appearing to read "Alex Frost".

Alex Frost
President and CEO
WebCaskets.com

cc: FTC via e-mail (funeral@ftc.gov)

william hedger
felton pa 17322

14854 trout school rd

April 25, 2000

Committee on Aging
G31 Dirksen Building
Washington D.C. 20510

Dear Chairman Grassley:

Please submit this letter into the record of the Committee on Aging hearings on the funeral industry. I would also like to commend you and your Committee for holding the hearing on such a worthwhile matter and in such a bipartisan manner.

I became interested in the funeral industry in 1996 after I was charged a two hundred and fifty dollar (\$250) fee to view my dear father for thirty minutes. In bereaved disbelief, I reluctantly paid, but not without noting this unseemly event. At that time, I started my own investigation into the funeral industry. I found similar to extreme abuses perpetrated by unscrupulous businesses throughout the industry. These gangs of thieves are not only robbing older Americans, but they are also robbing all Americans! Having said that, I must also say that I found an almost equal number of very honest, hardworking men and women working in what I have come to realize is one of the most honorable professions to be in. I would also like to commend those who have continued to uphold the true mission and the honor of this profession. To work in this profession requires a very special person and a lot of personal sacrifice. It is a shame that the industry today has been invaded by the poor caliber of people who are not interested in taking care of our deceased loved ones, but instead, are only interested in how much money they can take from the bereft family of the deceased. Once again I would like to commend the ones who have: 1) resisted the get rich quick big money offered by conglomerates; 2) chosen to keep this industry honorable, and 3) opted to follow the Funeral Rule. I thank you.

I applied for and received a job to sell cemetery lots with one of the funeral conglomerates. I found myself being trained to "take advantage" of the consumers, with a promise of earning between eighty and two hundred thousand dollars per year! This was very tempting, but I could not be a part of deception that I found myself being taught. I have listed some of the problems I see with the funeral industry below, followed by my thoughts on the solution to the problems.

PROBLEM 1:

The cemetery does not have to pay their salespeople unless the salesperson makes a sale, and then they pay a commission based upon the total of the sale. This practice has the effect of turning borderline honest salespeople into lying, cheating thieves. It also allows for the cemetery to use the salesperson until he has sold to everyone in his family, then he lets him go. If the family member stops paying on the lot, then the cemetery gets to keep all the family member has paid on the lot and he gets to sell it again to the next sales person's family member or someone he has set-up an appointment with over the cemetery telemarketing system.

SOLUTION 1:

All salespeople should be paid by the hour and a flat rate for a sale. The flat rate should not be based on the total of the sale. Another solution to this problem would be to bring the cemetery under the F.T.C. rule. This would only work if the F.T.C. had the right to, and would enforce the Funeral Rule. If the salesperson had to show a price list and the cemeterian had to sell his lots for the same price at-need or pre-need, then this would stop most of the thievery. The cemeterian should not be allowed to keep all the money someone has paid on the lot if the person stops paying on the lot. NOTE: As a present practice, the cemeterians have figured out a legal way to keep the money paid them by financing the sale through their trust fund or a separate corporation they have set up. This is the way the same graves are sold several times.

PROBLEM 2:

The cemeterian can sell a vault on a pre-need contract and have the vault delivered to the cemetery where it is stacked outside in all kinds of weather, something the vault is not designed for. I am in the investigation process of verifying what I have been told regarding storage practices. For example, in Kentucky there are thousands of vaults sitting in a cemetery clearly exposed to the elements that have eroded away. Why? The concrete when mixed for the vaults was mixed by hand, leaving sand lines through the finished concrete, which compounded with poor storage practices and weathering accelerates the eroding and, thus, renders the vaults useless. When the vault is needed, the family is told that they will have to buy another vault because the one they already bought is not suitable for use. The family has no recourse because the vault has been delivered and, therefore, it is the family's responsibility to protect the vault. Another practice used by the cemeterian is to sell a vault for the "second time" if the person moved to another state and was buried in the other state. Why? Cemeterians take advantage of the fact that it is more expensive for the family to ship the vault than to buy another one.

SOLUTION 2:

The best way to solve this problem is to have a rule that would make delivery of the product before it is needed illegal. The cemeterian could still sell pre-need, but would be required to protect his and the consumers money by placing it in a guaranteed interest-bearing account. This money should be refundable to someone who has moved, or if the vault is a national brand it should be portable without additional charges. By placing the money in a guaranteed interest-bearing account the cemeterian and the consumer are protected from inflation, not to mention serious abuses. There are insurance policies that also cover funeral goods and they increase in value by five percent per year - this is more than inflation on everything except the funeral industry. In the cemetery sales class I spoke of earlier, we were taught to tell the consumer that burial for two today would cost eight thousand, four hundred dollars (\$8,400.00). In ten years the same burial would cost sixteen thousand, eight hundred dollars (\$16,800.00), and in twenty years the cost would be thirty three thousand, six hundred dollars (\$33,600.00). Can you imagine the fear this puts into someone who hopes to be around for another twenty years? Please continue to think about this, couple it with problem three, and watch the fear grow!

PROBLEM 3:

The cemeterian tells the consumer that all cemetery property is almost used up, that new ones will not be allowed to open, and if you want to be buried you should buy your lots now. If possible, you should buy your children's lots also, if not, the only choice you will have is to be cremated. This can be, and is, frightening for people whose religious beliefs are against cremation or they are afraid of being burned or burial methods not to their

liking.

SOLUTION 3:

Add a rule to the Funeral Rule that anyone selling cemetery property would have to disclose to the consumers that there would be new cemeteries when theirs are filled. Make it illegal to use the threat of cremation to sell a burial lot.

PROBLEM 4:

Markers or monuments are being sold and engraved before needed. If someone moves, the cost to move the memorial, to have it set, and have the date engraved by a third party is more costly than buying a new one from someone local. If the consumer should get a divorce or the survivor re-marries and he/she is not buried where the already engraved memorial is, then you have a useless memorial and a useless grave.

SOLUTION 4:

Only purchase the memorial and engrave it on an as-need basis. By placing the money in a guaranteed interest-bearing account or a value growth insurance policy, you protect the cemeterian and the consumer from inflation; this also makes the product portable if a national supplier is used in the contract.

PROBLEM 5:

Throughout the cemetery industry the trust funds are under the control of the cemeterian. I was told by a cemeterian if I bought the cemetery he was managing, that I could loan money from the trust fund to one of my friends or one of my children, send them a bill once a month for three years, and then I could write it off as a bad debt. I could then take a tax deduction on the loss. He also said if I wanted to, I could receive payment in cash on the loan, receive all my money back with interest, and still take the tax break. (verify with the Tax Code)

SOLUTION 5:

Imprison all cemeterians caught raiding a trust fund. Make and enforce a rule that all trusted money be put in a guaranteed interest-bearing account and not under the control of the cemeterian or any of his relatives. If our trust funds continue to be raided by the funeral industry it will have the same effect as the savings and loans had on the American public in the mid-eighties, except much worse.

PROBLEM 6:

Polluting of our ground water and our air.

SOLUTION 6:

Use new and improved products that stop embalming fluids or introduced chemicals to a body from reaching our water table and our air. This is something that the E.P.A. should look into; it is common for a vault to be breached while digging the adjacent grave, for lawn crypts to drain into a wetland area, and also the above ground mausoleums leak and pollute our water and air.

PROBLEM 7:

Referral bribe. This is one of the ways funeral directors get new customers. The funeral director either volunteers to sit on the board of a nursing home or hospice or outright buys preferential business. For example, when a patient dies the preferentially positioned funeral director is called to pick-up the body and then afterwards the family is told where the body is. Herein lies a big problem for the family because some families don't understand and are not properly informed that they can move the body to a funeral home of their choice. Once the body is in the funeral director's domain, the funeral director will tell the family that there will be a charge to move the body. The emotional tug is effectively applied that the bereft family should let the dead rest in peace. Behind the scene, the nurse who called the funeral director is paid a referral fee. In a recent case in our family if I had not stepped in and moved the body to another funeral home the same funeral would have cost the family at least five thousand dollars (\$5,000) more.

SOLUTION 7:

I am tempted to say keep all funeral directors away from the nursing homes and hospices, but that would keep the good ones away also and, thus, deprive them from the blessings that come from volunteering. So the real solution is to: 1) much like a "living will" is to inform, in clear writing, the families of the deceased of their rights and options, 2) make it illegal (with penalties) to pay for an unsolicited and unauthorized family referral, 3) to snatch a body, and 4) make it illegal to impose any penalty (i.e. the penalty to equal the cost of the funeral.).

PROBLEM 8:

NON-DECLINABLE BASIC SERVICES FEE! This by all means is the most damaging rule in the Funeral Rule to the consumers, and it should be abolished. The non-declinable basic service fee stifles competition. My investigation revealed that the F.T.C. tried to establish competition when they wrote: "This means that you cannot charge an additional fee or surcharge to consumers who purchase a casket elsewhere" (see what consumers cannot be required to purchase, on page thirty of the funeral rule). The funeral industry has used the non-declinable fee to circumvent the intent of the Funeral Rule. This is how: if a new casket store opened in town, the local funeral directors would lower the price they charged for their caskets while on the other hand they would raise their non-declinable fee, thus driving the new casket store out of business. The misdeed to the consumer does not stop there. The funeral director would then raise the cost of the casket back up, leaving the inflated non-declinable fee in place. By the way, the casket store or funeral merchandise store was already paying at least one hundred percent more for his merchandise than the funeral director did from the supplier, and the merchandise store could not purchase the same colors as the local funeral director.

SOLUTION 8:

ABOLISH THE NON-DECLINABLE SERVICES FEE! By abolishing the non-declinable services fee you can and will establish competition in the funeral industry. By abolishing this rule you will give the consumers the tools to fight the funeral industries strong associations, which is intent on doubling the cost of a funeral every ten years. By establishing competition you give the consumers a choice, which brings price-point and strength to the consumers. No other rule change or legislation will have the accumulative effect that you will gain by abolishing the non-declinable services fee.

PROBLEM 9:

Mafia influence. You may say those are strong words, but the dictionary defines mafia as "a secret organization composed chiefly of criminal element and usually held to control racketeering". This definition alone does not support mafia influence. Lets see how the dictionary defines racketeer: "One who extorts money or advantage by threats of violence, by blackmail, or by unlawful interference with business or employment." With the combined definitions, I can attest that the mafia is alive and well throughout the funeral industry. I don't know how wide spread it is, but I do know first hand that I have received menacing calls from as far away as California and Florida telling me to stay out of the funeral business if I knew what was good for me, and I live in Pennsylvania. I also know the fear I have seen in suppliers that I have ask to sell their merchandise to me so I could resell it in a funeral merchandise store. A monument dealer was forced to renege on a building lease with me by the local and national funeral industry. His quote to me was "William, you just don't realize how big of an organization you are dealing with, nor do you realize how ruthless they can be. You could maybe sue me, but they can take my family, my business, and most of all my life." In two meetings at a casket manufacture I was told, "We will sell you our competitors caskets, but not ours. We will let the wrath of the industry fall upon them, not us, but we will have to make the delivery to you in an unmarked truck and you will have to place the order with another person, not us, because if any one asks we don't even know you." When I ask how they could sell me their competitors' caskets, they told me that that was easy. When they put their caskets in a funeral home, they buy all of their existing stock and they have a couple of warehouses full that they sell to casket stores. When I told them I had seen one of their caskets in a casket store in Kentucky, the store was paid a visit that same day by two big men who, I understand, turned the casket over wrote down the serial number and left with the casket still turned up side down. That night the funeral director who sold the casket to the casket store was paid a late night visit by the same two big men. I understand he had to do some powerful begging for his life, but returned home unharmed. The casket store soon thereafter closed. This is just a small example of the mafia's tentacle-grip like influence that I have seen in the funeral industry. This only increases my drive to change the industry for the betterment of the consumers. I know from my own experience what risk this Committee has taken by holding these hearings and I commend you for your bravery. Change can only be made by those who are willing to risk it all.

SOLUTION 9:

This is probably the most difficult problem to solve, but I would suggest a justice department investigation and recommend long terms of imprisonment for all convicted of racketeering.

PROBLEM 10:

Embalming. The Funeral Rule states "You cannot require consumers to buy unwanted or unneeded goods and services to get the items that they do want." It is my opinion that not only is embalming unwanted by the educated consumers, it is definitely not needed. The Funeral Rule also states that "it is a deceptive act or practice for a funeral provider to: i) represent that a state or local law requires that a deceased person be embalmed when such is not the case; ii) Fail to disclose that embalming is not required by law except in certain special cases, if any." I see the intent of the Rule is to stop the funeral provider from charging the consumer for embalming, which even the F.T.C. saw as an unneeded or unwanted service. The funeral provider is able to circumvent the intent of the Rule through the following loopholes in the rule: 1) An example is found on pages 30 and 31: "During July, a family requests that a funeral occur five days after death, but does not

want embalming. You don't have refrigeration facilities. Your state law does not require embalming under any circumstances. However, in this situation, you can refuse to provide these arrangements, unless the family buys embalming. You can consider such a request impractical or excessively burdensome." 2) On page ten the Rule states, "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial." 3) On page six the rule states, "Exception: You are not required to offer a General Price list if you remove the deceased for transportation to the funeral home and, at that time, only request the authorization to embalm. When you request authorization to embalm, however, you also must: disclose that embalming is not required by law (except in special cases, if relevant)." No wonder the NFDA likes the Funeral Rule - It looks like they wrote it! With loopholes like this, the Rule is very detrimental to the consumers as the funeral directors have used these loopholes to charge the consumer on the average of three hundred and fifty dollars (\$350.00) for this unneeded and unwanted service. Embalming is mutilation of the body and the embalming fluids are polluting our ground water and our air. Embalming fluids are also causing health problems for the embalmers - a Workman's Compensation matter.

SOLUTION 10:

Remove these very costly loopholes from the Funeral Rule; this would let a family who wished to have a viewing to do so without first allowing for the mutilation of their loved one's body, the polluting of our ground water or our air, and the added expense of an unwanted and currently an unneeded service.

PROBLEM 11:

The Funeral Rule: The Funeral Rule, as written, shows the influence of the very powerful funeral industry. I agree with the NFDA when they state, "The Funeral Rule has made funeral directors better businessmen and women." But I strongly disagree when they state, "And made the families they served informed consumers." You cannot let the enemy teach your children, nor can you let them write the rules of engagement in war, if you wish to win! To properly inform the consumer, someone except the funeral industry must do so. I am not saying that the consumer is not better informed now than they were before the Funeral Rule. What I am saying is that the Funeral Rule doesn't have strong enough enforcement nor penalties for those who break the rules and that the rules are violated on a regular basis, thus putting the consumer at a disadvantage. The funeral industry is very organized, but the consumers are not and this is why we have laws against monopolies, racketeering, etc., to protect the consumers. The lack of enforcement of these laws allows for greater abuse of the laws, and a less informed consumer.

SOLUTION 11:

I suggest legislation to require the F.T.C. to rewrite the Funeral Rule in such a way as to truly protect the consumer. I would also ask for better enforcement of the Rule as rewritten. I would ask the F.T.C. to keep the fox out of the chicken house this time, for the benefit of the consumer. I also suggest that the Committee seek sufficient funding for an independent group (that is free from coercion, bribes and undue influence) that could better inform the consumers. I would suggest a group like FAMSA. I wouldn't recommend the AARP because of the influence the funeral industry wields in that organization due to the large volunteer effort and the large contributions made to that organization. The AARP

has the ability to inform a large number of consumers, but if the information is tainted it may be of more harm than good.

PROBLEM 12:

Coverage of the Funeral Rule: I once again find myself agreeing with the NFDA when they say that the cemeteries, retail casket stores, and direct disposition companies should be brought under the Funeral Rule. I have seen an effort on this sector of the market to abide by the Funeral Rule although they are not under the guidelines of the Rule. Although this compliance has been on voluntary basis, I feel that it is not fair to place one sector of an industry under a rule and not the other. This can lead to unfair competition in the market and can also lead to abuse of the consumer without recourse.

SOLUTION 12:

Bring the whole funeral industry under a new and improved Funeral Rule, one that gives the consumer more protection and has more teeth to enforce the rule.

COMMENTARY:

Please understand that I am only on the side of justice and that I have looked deeply into the subject at hand before entering my testimony. Even if all the solutions I have suggested as were to be put into place that none of the suggestions could make the kind of change that bringing honest national competition to the marketplace would make. A company that would be interested in the need at hand and not in taking advantage of the consumer at one of the most vulnerable times in their life could change the industry. A company could make a reasonable profit by charging half the amount of today's funeral costs and yet provide better service. At this time I would like to thank the Committee for allowing me the opportunity to enter my testimony into the record. If the Committee should find a person with my experience and knowledge usable, I would be happy to volunteer to assist you in any way possible.

Thank you.

Sincerely,

William H. Hedger, Sr.

April 25, 2000

I am an independent funeral home owner and was present at the recent Special Committee on Aging hearings in Washington.

Two of the major issues facing funeral consumers today are; 1) The lack of uniform laws covering all providers of funeral goods and services, and 2) The lack of adequate consumer protection when a funeral is purchased in one area and used in another.

Our society is growing increasingly more mobile, and the various state laws offer little protection to many consumers who have preplanned their funerals in one state and move to another. I have personally experienced this when former residents of Florida and Texas moved to North Carolina and received only a small fraction of the benefits of their prepaid funeral arrangements. In contrast, consumers moving from North Carolina to other state may take from 90 to 100 percent of their prepaid funeral with them.

Cemeteries, crematoriums, casket stores, and monument companies are not covered by the present Federal trade Commission rule governing funeral services, yet they may sell the same merchandise and in some cases perform many of the same services without regulations. It is indeed hard to see where the failure to apply the rule in all cases is fair to the consumer.

I respectfully request that this letter become a part of the record when reviewing the Special Committee on Aging report given on April 10 and 11.

Sincerely,

Beacham McDougald
McDougald Funeral Home and Crematorium
PO Box 187
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