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**STATEMENT  
OF THE  
NATIONAL FUNERAL DIRECTORS ASSOCIATION**

**ON**

**H.R. 5212,  
“BEREAVED CONSUMER’S BILL OF RIGHTS ACT of 2016.”**

**BEFORE THE  
ENERGY AND COMMERCE COMMITTEE  
SUBCOMMITTEE ON COMMERCE, MANUFACTURING AND  
TRADE  
UNITED STATE HOUSE OF REPRESENTATIVES**

**MAY 24, 2016**



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Mr. Chairman, Ranking Member, and members of the Subcommittee, thank you for the opportunity to testify this morning.

I am Bob Arrington, CCO, founder and president of Arrington Funeral Directors in Jackson, TN. I am honored to be serving as the president of the National Funeral Directors Association (NFDA). I first became interested in funeral service when my grandfather died in 1963. My neighbor owned a funeral home and I spent time there helping out after school and on weekends. After completing mortuary science school I received my funeral directors license in 1978 and my embalmers license in 1979. Over the years, I have served my community and my profession by taking on leadership roles with the Tennessee Funeral Directors Association (TFDA), and I was appointed to a 4 year term by the Governor of the State of Tennessee to serve on the Tennessee State Board of Funeral Directors and Embalmers, and served the last year of my term as President of this regulatory board.

I am testifying today on behalf of the nearly 20,000 funeral directors who are members of NFDA. Together, we represent more than 10,000 funeral homes in the United States and 39 countries around the world. NFDA is the world's leading and largest funeral service association, is a trusted leader, a beacon for ethics, and the strongest advocate for the profession and the families we are called to serve. NFDA is headquartered in Brookfield, WI, and has an office in Washington, D.C.

Approximately 86% of funeral homes in the United States are privately owned by families or individuals. The remaining 14% are owned by publicly traded corporations. 98% of NFDA-member funeral homes are owned by individuals, families, or closely held private corporations. The average NFDA-member funeral home serves 113 families per year and has three full-time and four part-time employees.

As the country's leading funeral service association, NFDA is also dedicated to serving the public. In order to help consumers make informed decisions about how to meaningfully celebrate and honor the life of a loved one, NFDA offers a number of resources that help them understand topics such as meaningful funeral planning, cremation, types of loss, grief, bereavement, and much more. NFDA service representatives are available to respond to general questions consumers may have about funeral service.

I want to thank Congressman Bobby Rush for his efforts to protect consumers. Like the Congressman, NFDA members were horrified by the illegal activity that was discovered in 2009 at Burr Oak Cemetery in Illinois. In the 'findings' section of this legislation, two other incidences involving a



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cemetery and a crematory are mentioned – Tri-State Crematory in Georgia and Menorah Gardens in Florida. None of these incidences involved NFDA members or for that matter, funeral directors.

The Tri-State Crematory incident happened in 2002, 14 years ago, and the owner, Ray Brent Marsh, who was not a funeral director, was arrested and charged by the state of Georgia with theft by deception, abusing a corpse, burial service-related fraud, and giving false statements. He was convicted and sentenced to a 12-year jail term.

In December 2001, allegations of removing bodies and re-selling graves were leveled against a publicly-traded corporation that owned and managed Menorah Gardens in South Florida. Ultimately, the Attorney General filed a civil suit against the company that was settled with the corporation paying up to \$14 million in fines and restitution and taking steps to ensure burial problems wouldn't occur again. Criminal charges also were filed based on corporate documents and interviews with former Menorah Gardens employees and other individuals. As a part of the settlement, the corporation was required to do a cemetery-by-cemetery review of its burial records to confirm that people were properly buried.

There is no doubt these were criminal and vile acts by a few "bad apples," but I must state, my profession – the profession I love and have dedicated my life to – should not be cast in a disparaging light because of three incidents in the last 15 years, which were handled appropriately by the state.

As a result of these incidents, the GAO conducted a study entitled "Death Care Industry: Regulation Varies Across States and by Industry Segments" to provide data on whether the federal government should take on a greater role in regulating the death care industry – primarily funeral homes, crematories, cemeteries, pre-need sales, and third-party sales of funeral goods. The federal government has a limited role in regulating the death care industry and most regulatory responsibilities are handled at the state level.

The GAO's research showed that states vary in their approach to regulating the various segments of the death care industry. A majority of states have more than one agency responsible for regulating all or most of the industry segments. States also vary in the mechanisms they have and use to enforce regulations covering the death care industry and protect consumers. These enforcement mechanisms include licensing or registering businesses and practitioners, inspecting facilities, and taking enforcement actions against those businesses or practitioners who violate state rules or regulations.

Over the last several years, states have continued to provide oversight and increased protections for the deceased, their families and the providers of funeral services. Therefore, it is the



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belief of the NFDA and its members that state regulation of the funeral profession is sufficient and there is no need for further regulation by the federal government at this time.

While we applaud Congressman Rush's concern for grieving families, a concern that we share and is equal to our own, we oppose H.R. 5212. Next year, the FTC is scheduled to begin a comprehensive review of the Funeral Rule, something that happens on a regular basis. NFDA feels this review offers a better alternative to H.R. 5212, which would merely expand a rule that is already flawed. In NFDA's opinion, the Funeral Rule needs to be redesigned and redrafted, not simply expanded.

In 2011, NFDA found that 34 states have either incorporated the FTC Funeral Rule into state laws or regulations or have adopted funeral price disclosure laws that are similar to the Funeral Rule. Had the FTC not made price disclosure subject to federal regulation over 30 years ago, it is highly probable that states would have taken a more prominent role on price disclosure issues rather than conceding this area of regulation to the FTC. States are in a much better position to adopt price disclosure regulations that fit their markets and the needs of consumers.

Enforcement is a key example of the Funeral Rule's flaws. NFDA has long been opposed to the way the FTC handles enforcement. Instead of using consumer complaints as the basis for enforcement action, the FTC only relies on undercover shoppers who apply the rule subjectively. It's also bad for consumers because the FTC offers no recourse when a consumer expresses a real concern about an interaction they have had with a funeral director.

Additionally, the imprecise and overly broad language of the Funeral Rule has long been a thorn in the side to both the FTC and funeral service. In fact, in the most recent manual, "Complying with the Funeral Rule," the FTC misinterpreted its own rule in several important respects. The FTC staff later admitted the errors when they were pointed out by NFDA.

Another more serious misinterpretation of the Rule has just arisen in the past year. For the first time in the 32-year history of the Funeral Rule, FTC staff is re-interpreting the Funeral Rule to require funeral providers to give price lists to consumers before showing them into funeral arrangement offices that contain casket or burial vault displays. FTC lawyers have advised funeral homes to either remove all casket and vault displays from funeral arrangement offices or force price lists on consumers before they are allowed to enter an arrangement office. As you can imagine, many small funeral homes do not have adequate space to move caskets and vault displays, and handing a family a price list before speaking with them about their loved one does not demonstrate care and compassion for their loss.



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These are just a few examples of the many problems funeral homes have faced over the past three decades trying to comply with a rule that even the FTC cannot get right.

While the Funeral Rule offers important consumer protections, it is not a one-stop-shop solution. State laws and regulations of funeral homes, cemeteries and crematories fill the gaps left by the Funeral Rule. NFDA works closely with state associations to improve state laws governing the profession, ensuring they reflect the evolving needs of consumers and the funeral professionals who serve them.

When the FTC reviews the Funeral Rule next year, everyone who has concerns about the Funeral Rule will be able to make their voice heard. NFDA is confident that the review will produce an updated Funeral Rule that continues to protect consumers.

In NFDA's opinion, the Funeral Rule is far too important to be expanded without a full exploration of the complex issues involved, something that may not happen in Congress. NFDA is dedicated to ensuring this review process will result in positive changes for both consumers and funeral service.

We wholeheartedly agree with Congressman Rush that changes need to be made, but we feel the Funeral Rule needs to be redesigned and redrafted to address the realities of the funeral market in 2016 which is infinitely different from the 1970s when it was written by FTC attorneys. It would be better to do this through a comprehensive rulemaking process where all interested parties can be heard rather than through Congressional mandate.

Mr. Chairman and distinguished members of the committee, on behalf of the members of the National Funeral Directors Association, I want to conclude my testimony by thanking you for the opportunity to testify today. I hope my testimony has been helpful and I will be happy to answer any questions you may have.