



## Consumer Federation of America

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Energy and Commerce Committee Commerce, Manufacturing and Trade Subcommittee

Legislative Hearing on 17 FTC Bills

Chairman Burgess, Ranking Member Schakowsky, and other members of the Commerce, Manufacturing and Trade Subcommittee. I am Michael Best, Senior Policy Advocate for the Consumer Federation of America (CFA). CFA and the Funeral Consumers Alliance (FCA) appreciate the opportunity to provide testimony on H.R. 5212, the Bereaved Consumer's Bill of Rights Act of 2016 (H.R. 5212 or the bill).

CFA is a non-profit association of more than 250 pro-consumer not-for-profit groups that was established in 1968 to advance the consumer interest through research, advocacy, and education. FCA is a non-profit organization, with more than 70 local educational groups, that was founded in 1963 to protect the consumer's right to choose a meaningful and affordable funeral. FCA, then known by another name, worked with the FTC for years to push for the successful implementation of the "Funeral Rule" in 1984. Both of our organizations have been concerned for decades, indeed even before the Federal Trade Commission (FTC) issued its first Funeral Rule in 1984, with the lack of useful information and protection available to individuals and families purchasing funeral and burial services.

### **CFA and FCA Support H.R. 5212**

Both CFA and FCA support H.R. 5212 because it would provide both stronger and broader protection to consumers of these services. First, it would give the FTC and state Attorneys General additional tools to ensure that the marketplace for funeral and burial services was truly competitive because informed consumers were making rational decisions about these services. The bill, notably, allows Attorneys General to bring an action under the FTC rules mandated by H.R. 5212. The bill also respects state law by preempting only state law that is inconsistent with H.R. 5212 or rules promulgated under it.

Second, H.R. 5212 would extend the consumer benefits of the FTC Funeral Rule to all death-related businesses, codify the Rule, and establish minimum standards and a culture of accountability for the cemetery industry that will help deter abuses. Consumers see the funeral, cemetery, monument, and casket purchases as one. They expect accurate, accessible information and truthful sales representations from all funeral-related vendors. Making an agency rule into law would focus needed FTC attention on enforcement.

We are aware of, and not unsympathetic to, the claims of some non-profit providers of cemetery services, particularly individual churches, that they would have difficulty complying with the requirements of the bill, especially those related to record-keeping over time. Therefore, we did not oppose the amendment that sought to ease requirements on relatively small non-profits providing cemetery-related services. We also would not object, after the passage of H.R. 5212, to the FTC helping ensure that rules written were informed by an understanding of the different types of service providers – from large for-profits at one end of the continuum, to individual churches operating non-profit services at the other end.

However, we would note that large for-profits are very much involved in the provision of cemetery-related services, and that their involvement is growing. Service Corporation International (SCI), North America’s largest provider of death care products and services, operates 469 cemeteries, as well as 1,535 funeral service locations, in 45 states, DC, Puerto Rico, and eight Canadian provinces, generating nearly \$3 billion in income in 2015.<sup>1</sup> Moreover, the second largest operator, StoneMor Partners L.P. (SPL) manages 307 cemeteries, with 47 of their 105 funeral homes on the grounds of one of these cemeteries.<sup>2</sup>

We would also note that non-profits are increasingly asking for-profits to manage their services. For instance, in 2014, SPL entered into a lease and management agreement with the Archdiocese of Philadelphia to operate 13 cemeteries in Pennsylvania for 60 years. They paid the Archdiocese \$53 million dollars up front. Certainly, SPL could be expected to assist the Archdiocese in complying with the record-keeping requirements of the H.R. 5212.<sup>3</sup>

### **CFA and FCA Urge Congress to Call on the FTC to Modernize the Funeral Rule**

In 1984, the Federal Trade Commission issued a Funeral Rule because it recognized the unique character of the marketplace for funeral and cemetery services. For consumers, these services are not discretionary, like a vacation or entertainment. Everyone will die and require performance of some kind of service, even it’s a simple burial. While the funeral industry does not make available overall sales figures, it is easy to estimate that

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<sup>1</sup> Service Corporation International, 2015 10K.  
<https://www.sec.gov/Archives/edgar/data/89089/000008908916000035/sci-12312015x10k.htm#sBA3D30B981D458BB967E06D9DCE9DA0F>

<sup>2</sup> StoneMor Partners L.P., 2015 10K.  
<https://www.sec.gov/Archives/edgar/data/1286131/000119312516484599/d110702d10k.htm>

<sup>3</sup> Id.

these services cost consumers about \$20 billion a year.<sup>4</sup> More importantly, individuals and families spent relatively large sums for these services. In 2014, the median cost of a funeral with viewing and burial was \$7,181.<sup>5</sup> Yet, according to a 2011 study, about half of all households in the country would have difficulty paying an unexpected expense of \$2,000.<sup>6</sup>

Not only are funeral services relatively expensive, they are often purchased by consumers at a time when they are especially vulnerable and disinclined to undertake a careful consumer search involving different types of services and service providers. This vulnerability, together with the relatively large expense incurred very infrequently, provided a rational basis for the FTC to establish minimum standards for the funeral industry that include effective price disclosure.

In retrospect, industry leaders recognize that the Funeral Rule benefited the industry as well as consumers. In January of 2010, Randall L. Earl, in his capacity as an elected officer of the National Funeral Directors Association (NFDA), testified before this Committee about an earlier version of the bill:

“...many NFDA members have reported that the Rule has made them better businessmen and women by helping them explain to consumers the cost of all of the different components of a funeral, thereby giving families a greater understanding of the costs involved. In addition, despite the cost of compliance, the Funeral Rule also benefits funeral homes by emphasizing the need for continuous staff training and education. Efforts to maintain compliance levels reinforce the professionalism of the funeral home staff by reminding them of the right of funeral consumers to the timely receipt of detailed and itemized price information.”

Unfortunately, consumers today are not able to easily access that information because the Funeral Rule has not been updated to be relevant to the realities of our Digital Age. The Funeral rule, issued in 1984 and amended in 1994, requires funeral homes to provide only price information over the phone or a price list to those visiting the home. It does not require disclosure on the websites of funeral homes. Yet, going back as far as 2010, 97%

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<sup>4</sup> There were 2,596,993 US deaths in 2013 (National Center for Health Statistics, Deaths and Mortality, Source: deaths: Final Data for 2013. Tables 1,7,10,20. <http://www.cdc.gov/nchs/fastats/deaths.htm>). Multiplying those deaths by the 2014 median cost of a funeral with viewing and burial of \$7,181 (National Funeral Directors Association, Median Cost of an Adult Funeral. <http://www.nfda.org/news/statistics#4>) gives us a figure of \$18,649,006,733. Another method of estimation arrives at a similar number. Service Corporation International, the largest provider of death care products in North America estimates that, with about \$3billion in revenue, they have about 16% of the funeral and cemetery market share in North America.  $\$3,000,000,000/0.16=\$18,750,000,000$ . Service Corporation International, 2015 10K. <https://www.sec.gov/Archives/edgar/data/89089/000008908916000035/sci-12312015x10k.htm#sBA3D30B981D458BB967E06D9DCE9DA0F>

<sup>5</sup> National Funeral Directors Association, Median Cost of an Adult Funeral. <http://www.nfda.org/news/statistics#4>

<sup>6</sup> Lusardi, Schneider, Tufano, Financially Fragile Households: Evidence and Implications, National Bureau of Economic Research Working Paper, May, 2011. <http://www.nber.org/papers/w17072.pdf>

of consumers used the internet when researching local products or services.<sup>7</sup> And the FTC, in its Consumer Information section, touts Internet search as a way to get the best product and deal.<sup>8</sup>

The cost to consumers of the somewhat antiquated disclosure requirements of the Funeral Rule were evident in a survey of funeral home services undertaken and released last year by CFA and FCA (findings attached). Our two organizations surveyed the prices and price disclosures of 150 funeral homes in ten areas. In each area, prices for the same funeral services within individual areas almost always varied by at least 100 percent and often varied by more than 200 percent. For example, right here in the District of Columbia, prices among 15 funeral homes for a full service funeral ranged from \$3,770 to \$13,800. Since each area has dozens of funeral homes, the range of prices is certainly greater than that revealed by our sample of 15 homes in each area. While the quality of services provided certainly can vary, one rarely finds this level of price variation in the marketplace for other services, ranging from insurance to health care.

In the absence of a requirement to offer complete online disclosures, some funeral businesses who do post prices online mislead consumers and directly contradict the intent of the Funeral Rule. Those businesses in our survey who did post prices online usually posted only all-inclusive packages. Most failed to alert consumers that they have the right to buy a la carte, and to decline any unwanted goods or services. If the same funeral home offered this incomplete information on a paper price list, that would be a direct and actionable violation of the Funeral Rule. But because the Rule does not contemplate online transactions, this deception is perfectly legal when it comes by pixels instead of paper.

One reason for the price variation is our finding that price disclosures were often incomplete and difficult to obtain. Most importantly, the price information we needed to accurately price services was found on the website of only about one-quarter (38) of the 150 funeral homes we surveyed. Today, if that information is not available, few consumers will take the time to call or personally visit a number of funeral homes to compare prices and services. In an era when individual consumers, and virtually all non-profit organizations, have websites, it is not too much to expect all funeral homes to clearly and uniformly disclose prices for all their services online. The FTC should make this updating of the Funeral Rule a high priority.

## **Conclusion**

CFA and FCA are grateful to the Committee for the opportunity to submit this testimony and we look forward to working with you ensure that grieving and vulnerable consumers are protected when purchasing death products.

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<sup>7</sup> Nearly All Consumers (97%) Now Use Online Media to Shop Locally, According to BIA/Kelsey and ConStat. March 10, 2010. <http://www.prnewswire.com/news-releases/nearly-all-consumers-97-now-use-online-media-to-shop-locally-according-to-biakelsey-and-constat-87221242.html>

<sup>8</sup> FTC Consumer Information, Comparing Products Online. <https://www.consumer.ftc.gov/articles/0027-comparing-products-online>