To direct the Federal Trade Commission to establish rules to prohibit unfair or deceptive acts or practices related to the provision of funeral goods or funeral services.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 2016

Mr. Rush introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To direct the Federal Trade Commission to establish rules to prohibit unfair or deceptive acts or practices related to the provision of funeral goods or funeral services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Bereaved Consumer’s Bill of Rights Act of 2016”.

SEC. 2. FINDINGS.

Congress finds that—

(1) there have been shocking consumer abuses in the funeral industry, including scandals at Burr
Oak Cemetery in Alsip, Illinois, Menorah Gardens Cemetery in Palm Beach, Florida, and the Tri State Crematory in Noble, Georgia;

(2) funeral arrangements are a major expense for most American households and families;

(3) some consumers seek to ease the burdens on their families by arranging and paying for preneed funeral and cemetery arrangements;

(4) most funerals are planned by grieving family members at a time when they are especially vulnerable and unlikely to focus on cost comparison;

(5) the Federal Trade Commission’s Funeral Industry Practices Trade Regulation Rule (known as the Funeral Rule) dictates consumer protections in the funeral home, but does not cover the practices of cemeteries, crematoria, or sellers of monuments, urns, or caskets;

(6) State laws are inconsistent and frequently too weak to provide adequate consumer protections, creating a need for minimum Federal standards in this area;

(7) consumers have the right to receive clear and accurate information about all funeral goods and funeral services offered for sale;
(8) consumers need effective protection from
fraud and abusive practices by all providers of fu-
neral goods and funeral services and at all stages of
the funeral planning process; and

(9) a new Federal law that provides adequate
protections to grieving families is warranted.

SEC. 3. FTC RULEMAKING RELATING TO UNFAIR OR DE-
CEPTIVE ACTS OR PRACTICES IN THE PROVI-
SION OF FUNERAL GOODS OR FUNERAL
SERVICES.

(a) In General.—The Federal Trade Commission
shall prescribe rules prohibiting unfair or deceptive acts
or practices in the provision of funeral goods or funeral
services. Such rules shall include the following:

(1) A requirement that providers of funeral
goods or funeral services furnish accurate price in-
formation disclosing clearly and conspicuously the
cost to the purchaser for each of the specific funeral
goods or funeral services provided or offered for sale.

(2) A prohibition on misrepresentations by such
providers, including misrepresentations of the re-
quirements of Federal, State, or local law.

(3) A prohibition on conditioning the provision
of any funeral good or funeral service upon the pur-
chase of any other funeral good or funeral service
from that provider, except as required by law.

(4) A requirement that any presale disclosures
and contracts for funeral services or funeral goods
be written clearly, stating the merchandise and serv-
ices that purchasers are buying and their prices.

(5) In the case of contracts for funeral services
or funeral goods that are prepaid in whole or in
part, a requirement for clear and conspicuous
presale and contractual disclosure regarding any
penalties incurred if the consumer decides to cancel
or transfer the contract to another provider of fu-
eral services or funeral goods.

(6) A requirement that contracts for funeral
services or funeral goods disclose clearly and con-
spicuously all fees and costs to be incurred in the fu-
ture or at the time that the funeral services or fu-
eral goods are provided.

(7) A requirement that cemeteries provide to
consumers, in a timely manner, all written rules and
regulations of the cemetery, and a clear explanation
in writing of the interment, inurnment, or entomb-
ment right that has been purchased, and any mate-
rial terms and conditions of that purchase, including
any repurchase option by the cemetery or resale rights available to the consumer.

(8) A requirement that cemeteries—

(A) retain all records in existence on the date of enactment of this Act, including maps or other systems indicating the location and date of each interment, inurnment, or entombment;

(B) accurately record and retain records of all interments, inurnments, or entombments occurring, as well as any internment, inurnment, or entombment rights sold, after the effective date of the regulations issued under this subsection, in such manner and form as the Commission may prescribe in such regulations; and

(C) make such records available to Federal, State, and local governments, as appropriate.

(b) RULEMAKING.—The Commission shall prescribe the rules under subsection (a) within 1 year after the date of enactment of this Act. Such rules, and any future rules or revision of rules prescribed by the Commission prohibiting unfair or deceptive acts or practices in the provision of funeral goods or funeral services, shall be prescribed
in accordance with section 553 of title 5, United States Code.

(c) APPLICATION OF RULES TO TAX-EXEMPT ORGANIZATIONS AND STATES.—Notwithstanding the definition of corporation in section 4 of the Federal Trade Commission Act (15 U.S.C. 44), the rules prescribed under subsection (a), and any future rules or revision of rules prescribed by the Commission prohibiting unfair or deceptive acts or practices in the provision of funeral goods or funeral services, shall also apply to cemeteries organized or operated by—

(1) organizations described in section 501(c) of the Internal Revenue Code of 1986 that are exempt from taxation under section 501(a) of such Code, except for cemeteries organized, operated, managed, and owned by a religious denomination, middle judicatory, house of worship, or similar religious organization, and that are not organized, operated, managed, or owned by contract or affiliation with a for-profit provider of funeral goods or funeral services that offers those goods or services for sale to the public; or

(2) States or any political subdivision of a State.
(d) **ENFORCEMENT.**—Any violation of any rule prescribed under this section shall be treated as a violation of a regulation prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive acts or practices. The Federal Trade Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act. Any person who violates the regulations prescribed under this Act shall be subject to the penalties and entitled to the privileges and immunities provided in that Act.

SEC. 4. **ENFORCEMENT BY STATES.**

(a) **IN GENERAL.**—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in an act or practice which violates any rule of the Commission issued under section 3 of this Act or the Trade Regulation Rule on Funeral Industry Practices (16 C.F.R. 453.1 et seq.), the State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such violative act or practice, to enforce compliance with
such rule of the Commission, to obtain damages, restitution, or other compensation on behalf of residents of such State, or to obtain such further and other relief as the court may determine appropriate.

(b) NOTICE.—The State shall provide prior written notice of any civil action under subsection (a) or (f)(2) to the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right—

(1) to intervene in such action;

(2) upon so intervening, to be heard on all matters arising therein;

(3) to remove the action to the appropriate United States district court; and

(4) to file petitions for appeal.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this Act shall prevent an attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.
(d) ACTIONS BY COMMISSION.—Whenever a civil action has been instituted by or on behalf of the Commission for violation of any rule prescribed under section 3 of this Act, no State may, during the pendency of such action instituted by or on behalf of the Commission, institute a civil action under subsection (a) or (f)(2) of this section against any defendant named in the complaint in such action for violation of any rule as alleged in such complaint.

(e) VENUE; SERVICE OF PROCESS.—Any civil action brought under subsection (a) of this section in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

(f) ACTIONS BY OTHER STATE OFFICIALS.—

(1) CONSTRUCTION.—Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

(2) OTHER STATE ACTIONS.—In addition to actions brought by an attorney general of a State
under subsection (a) of this section, such an action
may be brought by officers of such State who are
authorized by the State to bring actions in such
State on behalf of its residents.

SEC. 5. EFFECT ON OTHER LAW.

Nothing in this Act or the rules prescribed under this
Act shall be construed to preempt any provision of any
law of a State or political subdivision of that State that
provides protections to consumers of funeral services or
funeral goods, except to the extent that the provision of
law is inconsistent with any provision of this Act or a rule
prescribed under this Act, and then only to the extent of
the inconsistency.

SEC. 6. DEFINITIONS.

In this Act—

(1) the term “cemetery” means any organiza-
tion, association, or other business that offers for
sale the interment, inurnment, or entombment of
human remains, but does not include any cemetery
that—

(A) performs fewer than a total of 25 in-
terments, inurnments, and entombments during
any calendar year; or
(B) sells fewer than a total of 25 inter-
ment rights, inurnment rights, and entombment
rights during any calendar year;

(2) the term ‘‘funeral goods’’ means the goods
which are sold or offered for sale directly to the pub-
lic for use in connection with funeral services; and

(3) the term ‘‘funeral services’’ means—

(A) any services which are sold or offered
for sale directly to the public in order to—

(i) care for and prepare deceased
human bodies for burial, cremation, or
other final disposition; or

(ii) arrange, supervise, or conduct the
funeral ceremony or the final disposition of
deceased human bodies; or

(B) services provided by funeral directors,
morticians, cemeterians, cremationists, and re-
tailers of caskets, urns, monuments, and mark-
ers.