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HB 509

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realistically confronting the facts within funeral service.

It is admitted that there are men and women who prefer the technical aspects of the profession. They like to enbalm and do restorative work. It is also true that some licensees seldom prepare a remains because their personal contact and administrative duties keep them fully occupied.

There are physicians who specialize in surgery. There are lawyers who do nothing but tax work. There are dentists whose practice is limited to extracting teeth and pharmacists who are research chemists. But in each of these fields the *general* education and license is that which must first be obtained and the specialization follows.

In funeral service the reasons are as logical and compelling.

It is helpful in the serving of people for all licensees to be fully qualified. As an example, the owner or manager should have the basic knowledge if not the experience to understand an embalming problem and perhaps help solve it, or at least to be able to relate it to someone.

Likewise a licensee specializing in technical functions should be able to fill in in other capacities in the absence of those who do this normally. He should also be able to serve those who may want him as their funeral functionary.

The following chapter deals with personnel practices. But it is pertinent at this point to state that for the funeral to continue with care taking personalized service given by licensed personnel there must continue to be an influx of such personnel to replace those who die, retire, or leave the field.

As long ago as 1957 the Joint Commission on Mortuary Education said in its report that the concept of the person licensed to practice funeral service must reintegrate the embalming with the funeral directing function. Also the role of the licensee must be expanded to include services which have a therapeutic and mental health value performed for the living.

The Commission was formed in April 1956 "to examine the bundle of tasks that have been socially and legally assigned as the occupational province of present-day American funeral service personnel with a view to determining the educational experiences, both preparatory and in-service, needed for their efficient and satisfactory performance."

The conclusion previously stated was predicated on the finding that embalmers were faced with an occupational dilemma—with ambiguous status. The reasons for this were summarized in the following manner:

1. Embalming in the minds of funeral service personnel is associated with the "back room" of the funeral home.
2. Dealing with the clientele "out front" is valued by funeral service staffs.
3. While not all who are primarily embalmers are discontented, those who are are critical in a manner symptomatic of frustrated career aspirations.
4. Funeral directing only in the dual license sense (funeral director and embalmer) means management, personal contacts and funeral direction. Paradoxically in many states this requires the least formal education and training.
5. Embalmers and other technicians have had little success in organizing associations other than unions.

There is one other point that the Commission made more than a decade ago which might be viewed as prophetic. In its analysis the Commission used the phrases "house of management" and "house of labor." It is our opinion that the whole-man-total-funeral concept with the single license will discourage a division of personnel whereas the owner-manager-technician concept will encourage it to the point where there may be a separation of "management" and "labor" in a funeral home.

A funeral home owner must face up to the following facts:

"Back room" men can be obtained, but often they must be paid as much or more salary as are qualified personnel. Also, these men *do* represent the funeral home and the owner(s) for better or worse. However, it is rare that a man who will make a worthwhile staff member can be recruited to be a "back room" man, a "second class citizen." There are times when the owner is away and one or more staff members fill in for him. Or he may be busy. The funeral is just as important to the people served by these staff members as it is to those served by the owner or manager. Irreparable harm can be done by a mistake or mistakes. There is no doing it over. The greater the education of a survivor or survivors the greater the possibility of his expecting good service by an equally or better educated person associated with the funeral home. The more closely a man fits the requirements of the whole-man concept the greater his chances are of meeting the challenge and needs of those of the "new" generation.

Paul R. Keenan, now of the University of Missouri, put it well when he said in his "Education for Tomorrow" :

If the funeral service practitioner of today and tomorrow is to be successful in his contacts with other members of his community, he will be expected to meet them on an equivalent academic basis. If he does not, not only will he be at some disadvantage, but many opportunities both personal and professional which he might otherwise enjoy will not be available to him.

We must also be aware that the basic fund of knowledge is increasing in this day and age at a rate in which it is doubled every ten years. This has resulted in many changes in sociological and professional practices. In many fields it has resulted in computer storage of information—in others it has established specialties, and sub-specialties within professions and occupational groups. Employment opportunities unknown ten years ago are commonplace today, and this has contributed much to the complex situation in which today's citizen must function and which he hopes to understand.

There is no doubt, unless some unforeseen circumstance arises, that knowledge will continue to become available at a constantly accelerating rate, accompanied by a comparable complexity of life; and the person who finds himself unprepared for it will experience some difficulty in keeping abreast of new developments in everyday living. If this is true of citizens attempting to find a place in life which is satisfying to them, it will also be true of the professional who will find the many faces of society constantly changing, and who will have to cope with these changes if he is to survive. It should be remembered that he must operate both as a member of his society and also as a professional person to satisfy special needs of the community in which he elects to function.

Funeral service has been comfortable in the knowledge that it has developed according to specific customs based on the needs of the people, but no one can adequately predict the lines on which it will develop further. It does not, however, require a soothsayer to

predict that funeral service will be subjected to changes because the needs and demands of the public are changing, and will continue to change.

In the almost 100 years of licensing the funeral functionary, there have been three basic steps of progression to meet the *needs and demands of change*, with a fourth now developing fast:

1. The embalmer–public-health concept.
2. The advent of the funeral director license to embrace more than embalming and to place responsibility for actions beyond preparation of the body.
3. The dual license law in most states with most licensees being both funeral directors and embalmers, or holding a combination license.
4. The single license to practice funeral service predicated on the whole-man–total-funeral concept to encompass services essential to the place of the licensee as a “care-taker,” or “care-giver,” or “gate-keeper” in America in the last third of the twentieth century.

APPENDIX X

Basic Data on State Pre-Need Trust Laws

STATE	PRE-NEED STATUTE	STATE CONTROL AGENCY	PERMIT REQUIRED	AMOUNT OF PAYMENTS PUT IN TRUST	AMOUNT OF INCOME PART OF TRUST	AMOUNT BUYER CAN WITHDRAW
1. ALABAMA	no law					
2. ALASKA	no law					
3. ARIZONA	yes	yes	no	100%	100%	100%
4. ARKANSAS	yes	yes	yes	100%	100%	none
5. CALIFORNIA	Funeral directors only	yes	no	100%	Used to pay expenses and forfeitures	100% of payments
6. COLORADO	yes	yes	yes	85%	Up to 15% of contract	Amount of payments & interest accrued.
7. CONNECTICUT	Insurance law governs	yes	yes			
8. DELAWARE	Participation in such activities considered grounds for suspension or revocation of license.					
9. DISTRICT OF COLUMBIA	no law					
10. FLORIDA	yes	yes	yes (only licensees can arrange)	100%	100%	100%
11. GEORGIA	yes	yes	yes	100%	100%	100%
12. HAWAII	no law					
13. IDAHO	yes	no	no	100%	100%	100% less cost of operating trust
14. ILLINOIS	yes	yes	yes	95%	95%	Amount in trust account less 25% or \$35.00 whichever is greater.
15. INDIANA	yes	yes	yes	100% less trustee's expense	100% less trustee's expense	Amount in trust account less 10% or \$35.00 whichever is greater
16. IOWA	yes	no	no	80%	100%	Amount in trust account on mutual consent

STATE	PRE-NEED STATUTE	STATE CONTROL AGENCY	PERMIT REQUIRED	AMOUNT OF PAYMENTS PUT IN TRUST	AMOUNT OF INCOME PART OF TRUST	AMOUNT BUYER CAN WITHDRAW
17. KANSAS	yes	no	no	100%	100%	100%
18. KENTUCKY	yes	yes	yes	100%	100%	100%
19. LOUISIANA	Participation in such activities possible grounds for revocation of license.					
20. MAINE	yes	no	no	100%	100%	100%
21. MARYLAND	yes	no	Licensed funeral director and em- balmer only	100%	100%	100%
22. MASSACHUSETTS	no law					
23. MICHIGAN	yes	no	no	100%	100%	100%
24. MINNESOTA	yes	no	no	100%	100%	100%
25. MISSISSIPPI	Pre-need contracts limited severely and controlled by Insurance Commissioner					
26. MISSOURI	yes	yes	no	80%	none	73%
27. MONTANA	yes	yes	no	100%	100%	100% on mutual consent
28. NEBRASKA	yes	yes	no	100%	100%	100%
29. NEVADA	Life insurance law governs					
30. NEW HAMPSHIRE	no law	Burial associations prohibited				
31. NEW JERSEY	yes	no	no	100%	100%	100%
32. NEW MEXICO	Life insurance law governs					
33. NEW YORK	yes	yes	no	100%	100%	100%
34. NORTH CAROLINA	yes	yes	yes	100%	100%	100%

STATE	PRE-NEED STATUTE	STATE CONTROL AGENCY	PERMIT REQUIRED	AMOUNT OF PAYMENTS PUT IN TRUST	AMOUNT OF INCOME PART OF TRUST	AMOUNT BUYER CAN WITHDRAW
35. NORTH DAKOTA	yes	yes	Can be engaged in only by operators of licensed funeral establishments	100%	100%	100%
36. OHIO	yes	no	no	100%	100%	100%
37. OKLAHOMA	yes	yes	yes	90%	100%	100% of amount paid into trust fund
38. OREGON	yes	no	no	100%	100%	100%
39. PENNSYLVANIA	yes	yes	no	last 70%	100% on deposit	last 70% of payments.
40. RHODE ISLAND	no law - Pre-need arrangements may be grounds for suspension or revocation of license					
41. SOUTH CAROLINA	no law - funeral directors may not collaborate with life insurance companies in this area					
42. SOUTH DAKOTA	yes	no	no	100%	100%	100%
43. TENNESSEE	yes	yes	no	100%	100%	100%
44. TEXAS	yes	yes	yes	90%	100% less trust expenses	All of payments held in trust - no interest
45. UTAH	yes	yes	yes	at least 75%	100% of trust	90% of the amount placed in trust
46. VERMONT	no law					
47. VIRGINIA	yes	no	no	100%	100%	Mutual consent
48. WASHINGTON	Insurance law governs					
49. WEST VIRGINIA	yes	yes	no	95%	95%	Amount in trust less 25% or \$35.00 whichever is greater

STATE	PRE-NEED STATUTE	STATE CONTROL AGENCY .	PERMIT REQUIRED	AMOUNT OF PAYMENTS PUT IN TRUST	AMOUNT OF INCOME PART OF TRUST	AMOUNT BUYER CAN WITHDRAW
50. WISCONSIN	yes	no	no	100%	100%	100%
51. WYOMING	Commissioner of Insurance sets out rules and regulations					

THE PRECEDING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

THE LEGISLATURE OF THE STATE OF ALASKA  
FISCAL NOTE

Second Session - Ninth Legislature .

I. REQUEST

Bill No. House Bill 509 (proposed CS)  
 Title: An Act relating to funerals and the practice of mortuary science  
 Requested by: House Commerce Committee Date: \_\_\_\_\_  
 Return Date Requested: \_\_\_\_\_  
 Agency: Commerce Program: Licensing Professions

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Regulating and Licensing of Professions

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100 PERSONAL SERVICES						
200 TRAVEL		6.0				
300 CONTRACTUAL		5.0				
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>		11.0	.0	.0	.0	.0

B. FUNDING: (Thousands of dollars)

GENERAL FUND		11.0	.0	.0	.0	.0
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	0 /	0 /	0 /	0 /	0 /
MAN MONTHS (P./T.)	/	0 /	0 /	0 /	0 /	0 /

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This bill does not create a board, but will place the responsibility for setting standards, developing examinations and examining and licensing applicants within the Department of Commerce and Economic Development. Total licensees are estimated to be from 75 to 100 persons and places of business initially. The Department will need contractual assistance to formulate regulations and funding to hold hearings the first year. We are assuming an effective date of July 1, 1976 and that investigations and enforcement are the responsible of the Attorney General.

IV. ATTACHMENTS

V. DATE: February 2, 1976 PREPARED BY: Sharon Andrew, Director

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

JOINT COMMERCE COMMITTEE  
HEARING AGENDA FOR FEBRUARY 6, 1976

AND

SUMMARY REPORT OF THE INTERIM COMMITTEE  
ON MORTUARY SCIENCE

SENATOR ED WILLIS  
CHAIRMAN INTERIM COMMITTEE

REPRESENTATIVE BOB BRADLEY  
CHAIRMAN JOINT COMMERCE COMMITTEE

# TELEGRAM

NCA ALASKA COMMUNICATIONS, INC.

PHONE: 526-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 8 34

02095 POM ANCHORAGE ALASKA 15 02-05 0340P AST

PMS REP BOB BRADLEY

JUN

1261

AS I READ HB509 EDUCATIONAL STANDARDS TOO HIGH

AND WOULD INCREASE CONSUMER COSTS. URGE REVISION

RICHARD L JOHNSON PO BOX 11 99510

# TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

02065 POM ANCHORAGE AK 15 02-04 945A AST

1976 FEB 4 PM 5 55

PMS REPRESENTATIVE BOB BRADLEY STATE HOUSE

POUCH V

167

JUN

URGE DELAY OF CSHG 509 BECAUSE IT NEEDS FURTHER STUDY

MARIA FOX BOX 600 LAKERIDGE DRIVE EAGLE RIVER 99577

*Respect your  
for advice*

*hearing  
about*

*Standing further Review  
further comments  
Further comments  
Ed Weller changed up  
your district*

# TELEGRAM

ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 7 59

12062 POM FAIRBANKS ALASKA 02-05 445P AST

PMS REP BOB BRADLEY

JUN

251

UNLESS CSHB509 CONTAINS DUAL LICENSING I WOULD

URGE ITS DEFEAT

JIM HEIBER 415 ILLINOIS FAIR

# TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 536-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 8 02

CJ

12060 POM FAIRBANKS ALASKA 02-05 445P AST

PMS REP BOB BRADLEY

JUN

250

OPPOSE CSHB509 BECAUSE IT IS TOO RESTRICTIVE

RAMONA VAN DE DEEGAETE

738 WEST 72 ANCH

# TELEGRAM

ALASKA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 7 59

12061 POM FAIRBANKS ALASKA 02-05 445P AST

PMS REP BOB BRADLEY

JUN

249

REQUEST FURTHER CONSIDERATION OF ALL ASPECTS CSH8509

BEFORE PASSAGE URGE CAUTION

JOHN CAVEN 4024 EVERGREEN FAIR

# TELEGRAM

RCA ALASKA COMMUNICATIONS INC

PHONE: 536-6440

JUNEAU, ALASKA 99801

#  
;  
12064 FAIRBANKS ALASKA POM 02-05 445P AST

PMS REP BOB BRADLEY

JUN

252

DOES CSHB509 REALLY CONSIDER THE CONSUMER URGE CAUTION  
BEFORE PASSAGE

WALLACE BELL 2100 STANFORD DR ANCH

# TELEGRAM

BCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 8 05

CJ

12067 POM FAIRBANKS ALASKA 02-05 445P AST

PMS REP BOB BRADLEY

JUN

AS I READ CSHB509 EDUCATIONAL STANDARDS TOO HIGH FOR

ALASKA

RITA IHITACAGA

509 MARINE VIEW JUNEAU

# TELEGRAM

ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 8 05

CJ

12066 POM FAIRBANKS ALASKA 02-05 445P AST

PMS REP BOB BRADLEY

JUN

254

URGE DEFEAT CSHB509 BECAUSE IT MAY BE TOO COSTLY FOR THE

CONSUMER

PAUL WAGNER SR 525 4TH FAIR

# TELEGRAM

ALASKA COMMUNICATIONS, INC.

PHONE: 580-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 8 04

CJ

12065 POM FAIRBANKS ALASKA 02-05 445P AST

PMS REP BOB BRADLEY

JUN

253

COST OF FUNERALS ALREADY TOO HIGH CSHB509 WOULD DRIVE THEM  
HIGHER

ROBERT W BIGGS

738 WEST 72 ANCH

# TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 8 06

CJ

12068 POM FAIRBANKS ALASKA 02-05 445P AST

PMS REP BOB BRADLEY

*256*

JUN

UNLESS CSHB509 CONTAINS DUAL LICENSING I WOULD URGE

ITS DEFEAT

IRENE S LOWERY RR5 BOX 5199 NBR 32 JUNEAU

# TELEGRAM

NCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 8 35

02096 POM ANCHORAGE ALASKA 15 02-05 0340P AST

PMS REP BOB BRADLEY

0262

JUN

URGE FURTHER STUDY TO INCORPORATE APPRENTICESHIP

AND TRAINING AGENCY REQUIRMENTS IN HB509

RANDOLPH WEST 1542 G STREET 99501

# TELEGRAM

BCA ALASKA COMMUNICATIONS, INC.

PHONE: 588-6440

JUNEAU, ALASKA 99801

02064 POM ANCHORAGE AK 15 02-04 945A AST

1976 FEB 4 PM 5 55

PMS REPRESENTATIVE BOB BRADLEY STATE HOUSE

POUCH V

0165

JUN

UNLESS CSHB509 CONTAINS DUAL LICENSING

I WOULD URGE ITS DEFEAT

KEN VOLTZ

ANCHORAGE ALASKA

# TELEGRAM

NCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

02063 POM ANCHORAGE AK 15 02-04 945A AST

1976 FEB 4 PM 5 55

PMS REPRESENTATIVE BOB BRADLEY STATE HOUSE

POUCH V

0164

JUN

CSHB509 NEEDS MUCH REVISION AND SHOULD CONTAIN DUAL

LICENSING

DENNIS WARD

ANCHORAGE AK

# TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 536-6440

JUNEAU, ALASKA 99801

1976 FEB 4 PM 5 56

02066 POM ANCHORAGE AK 15 02-04 945A AST

PMS REPRESENTATIVE BOB BRADLEY STATE HOUSE

POUCH V

JUN

URGE DELAY IN CSHB509 PENDING FURTHER STUDY WITH

RESPECT TO RECIPROCITY

RICKY LOWE 3404 WOODLAND PARK DRIVE

ANCHORAGE ALASKA

# TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

02068 POM ANCHORAGE AK 15 02-04 945A AST

1976 FEB 4 PM 6 00

PMS REPRESENTATIVE BOB BRADLEY STATE HOUSE

POUCH V

0171

JUN

AS I READ CSHB509 EDUCATIONAL STANDARDS TOO HIGH FOR ALASKA

CHRIS MILLAR SRA BOX 40510

ANCHORAGE ALASKA

# TELEGRAM

HCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 4 PM 6 01

02069 POM ANCHORAGE AK 15 02-04 945A AST

PMS REPRESENTATIVE BOB BRADLEY STATE HOUSE

POUCH V

JUN

PROPOSED FTC FUNERAL RULES NOW PENDING MAY NEGATE

CSHB509

FRED KEHL

# TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 4 PM 6 03

02072 POM ANCHORAGE AK 15 02-04 945A AST

PMS REPRESENTATIVE BOB BRADLEY STATE HOUSE

POUCH V

1275

JUN

DOES CHSB 509 REALLY CONSIDER THE CONSUMER URGE

CAUTION BEFORE PASSAGE

ERNIE HAYWOOD 835D STREET ANCHORAGE 99501

# TELEGRAM

RCA ALASKA COMMUNICATIONS, INC. 1976 FEB 4 PM 6 45

PHONE: 586-6440

JUNEAU, ALASKA 99901

02084 POM ANCHORAGE ALASKA 15 02-04 340P AST

PMS REP BOB BRADLEY

JUN

CSHB264 WOULD VIRTUALLY PREVENT ME FROM PURSUING

MY VOCATION OF THE PAST FIVE YEARS

LARRY WOOTEN 4131 LAUREL ANCHORAGE

# TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 5 AM 12 11

02185 POM ANCHORAGE ALASKA 15 02-04 0922P AST

PMS SEN BOB BRADLEY

0192

JUN

OPPOSE CSHB509 BECAUSE OF RESTRICTIVENESS

GORDON W CATCHING BOX 6187 ANNEX

# TELEGRAM

NCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 8 37

02898 POM ANCHORAGE ALASKA 15 02-05 0340P AST

PMS REP BOB BRADLEY

JUN

0264

HOUSE BILL 509 LACKS COMPREHENSIVE STRUCTURE

AND IS VAGUE NEEDS EXTENSIVE WORK THANK YOU

LA ROGERS 3637 KNIK AVENUE 99503

# TELEGRAM

FCA ALASKA COMMUNICATIONS, INC.  
PHONE: 586-6440  
JUNEAU, ALASKA 99801

1976 FEB 5 PM 8 07

12069 POM FAIRBANKS ALASKA 02-05 445P AST

PMS REP BOB BRADLEY

JUN

~~12069~~ 257

URGE REJECTION OF CSHB509 IN PRESENT FORM AS IT WOULD

RESTRICT PREPLANNING FUNERAL SERVICES

ROBERT FARMSWORTH RR6 BOX 4064 JUNEAU

# TELEGRAM

ALASKA COMMUNICATIONS, INC.

PHONE: 336-6140  
UNEAU, ALASKA 99801

1976 FEB 5 PM 7 40

12072 POM FAIRBANKS ALASKA 02-05 520P AST

REP BOB BRADLEY

0260

JUN

I CANNOT WITH A CLEAR CONSCIENCE SUPPORT OR ENDORSE

CSHB509

BILL FREIDEL 318 YANKOVICH RD FAIR

# TELEGRAM

COA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 5 PM 7 58

12060 POM FAIRBANKS ALASKA 02-05 445P AST

PMS REP BOB BRADLEY

JUN 248

UNLESS CSHB509 CONTAIN DUAL LICENSING I WOULD URGE ITS

DEFEAT

PAUL ALLEN WAGNER JR

525 4TH AVE FAIR

# TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 526-6440

JUNEAU, ALASKA 99801

1976 FEB 4 PM 5 59

#  
; 02067 POM ANCHORAGE AK 15 02-04 945A AST

PMS REPRESENTATIVE BOB BRADLEY STATE HOUSE

POUCH V

0170

JUN

OPPOSE CSHB509 BECAUSE IT IS TO RESTRICTIVE

MR AND MRS LEONARD HUNTER BOX 440H STAR ROUTE A

ANCHORAGE ALASKA

# TELEGRAM

ECA ALASKA COMMUNICATIONS, INC.

PHONE: 582-6440

JUNEAU, ALASKA 99801

02070 POM ANCHORAGE AK 15 02-04 945A AST

1976 FEB 4 PM 6 01

PMS REPRESENTATIVE BOB BRADLEY STATE HOUSE

POUCH V

0173

JUN

COST OF FUNERALS ALREADY TOO HIGH CSHB509 WOULD DRIVE  
THEM HIGHER

JOANNE L RAVITHIS 940 WEST 77TH ANCHORAGE

# TELEGRAM

BCA ALASKA COMMUNICATIONS, INC.  
PHONE: 586-6440  
JUNEAU, ALASKA 99801

1976 FEB 4 PM 6 02

02071 POM ANCHORAGE AK 15 02-04 945A AST

PMS REPRESENTATIVE BOB BRADLEY STATE HOUSE

POUCH V

174

JUN

CSHB509 TOO COMPLICATED, I FAVOR SIMPLICITY URGE

REVISION

IRENE BRADY 2032 BOREALIS ANCHORAGE ALASKA

# TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

1976 FEB 4 PM 6 45

02082 POM ANCHORAGE ALASKA 15 02-04 329P AST

PMS HON ROBERT BRADLEY

0178

JUN

BEING MEMORIAL COUNSELOR EIGHT YEARS FEEL STRONGLY

RE-ARRANGED MEMORIAL SERVICES ARE OF BENEFIT TO PUBLIC.

THELMA KENISON 4521 CORDOVA APT 1 99503

# TELEGRAM

RCA ALASKA COMMUNICATIONS, INC. FEB 4 PM 6 45  
PHONE: 586-6440  
JUNEAU, ALASKA 99901

02083 POM ANCHORAGE ALASKA 15 02-04 345P AST

PMS REP BOB BRADLEY  
179

JUN

OPPOSE CSHB264 AND CSHB509 BECAUSE THEY RESTRICT OFFERING  
PREPLANNED FUNERAL ARRANGEMENTS

KEN PIEPGRAS STAR ROUTE B BOX 115 PALMER

THE PRECEDING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

THE FOLLOWING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.



# Bruce Funeral Home

P.O. Box 2351  
Anchorage, Alaska 99510

February 4, 1976

The House and Senate Commerce Committee  
Alaska State Legislature  
Juneau, Alaska

Re: Hearing on Mortuary Science and Related Bills

Dear Legislators:

**HOUSE BILL 509:**

HB 509 on Mortuary Science is not at all comprehensive and leaves too many areas up to others to decide its meaning. The lack of definitions will only place this bill, if enacted, in the courts for interpretation, which is what regulatory statutes are supposed to eliminate. Thorough study of other state laws would show that very definite guide lines must be set out in the statute, then allowing further rules and regulations to be adopted if needed. Alaska will be unique in that this profession will be regulated by three agencies: Commerce, Health and Social Services and Revenue, when other states have professional boards, made of of practitioners that adopt its rules and regulations. I do not advocate a board due to the limited number of practitioners, but feel the voice of the majority of practitioners must be listened to, in that we are the ones that will have to live with these laws both professionally and economically.

As an individual as well as a member and officer of the Alaska Allied Funeral Services Association, inc., I favor a dual license whereby the funeral director does not first have to be an embalmer; strong apprenticeship/practicum training requirements; special license provisions in case of the death of the licensee, so that a business that has taken many years of work to develop and large financial investments, is not eliminated and cause financial loss to the survivors; fair reciprocity requirements and a well structured cost disclosure clause included as a part of the body of the "Mortician" bill and not as a piggy back issue. I personally do not desire to see the educational standards raised so high that we cannot afford to get help and want to see eliminated the area where the department has the right to decide what courses should be taken in college prior to attendance at a school or college of Mortuary Science. No other state has this requirement.

**HOUSE BILL 264:**

Testimony was given to the House Commerce Committee last year regarding this bill. I feel that further study should be afforded this bill to cover all avenues concerning trusting of pre-need funeral services.

The House and Senate Commerce Committee  
February 4, 1975  
Page -2-

Presently the Federal Trade Commission is investigating laws such as this as a restraint of trade in denying the consumer the right of choice, of pre-planning and/or pre-paying their final rites. To establish a Trust Fund, we have been informed by local Anchorage area banking institutions, that a minimum of \$100,000 is required and an administration fee of \$500.00 is charged to administer that fund.

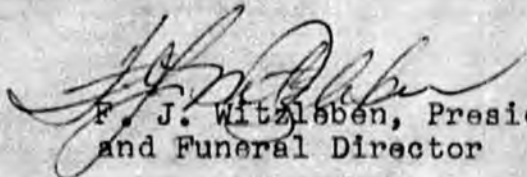
HOUSE BILL 271:

Testimony was given to the House Commerce Committee also last year regarding this bill. This bill does not require any specific type of pricing, and still allows the funeral establishment to give a family one lump sum price and terms of payment. It would also make it impossible to even remove the remains from the place of death until all arrangements had been made and completed with the family and the contractual agreement signed. This is virtually impossible. We submitted a proposed substitute to you last year. During the interim of the legislature this bill, or its piggy back identical, was gone over many times.

As a practitioner in the field of funeral service, I feel that great revisions are needed to HB 509 and its piggy back issues or HB 264 or 271 which ever way they are presently written before I can support the bill.

I sincerely hope that serious consideration will be given to all testimony presented to this committee as well as a complete review of all testimony and materials submitted to the sub-committee on mortuary science over the past 5½ months.

Respectfully yours,

  
F. J. Witzleben, President  
and Funeral Director



# Bruce Funeral Home

P.O. Box 2351  
Anchorage, Alaska 99510

February 4, 1976

The House and Senate Commerce Committee  
Alaska State Legislature  
Juneau, Alaska

Re: House Bill 509

Dear Legislators:

I, Kenneth D. Burton, duly licenses to practice the science of embalming in the State of Alaska, and being unable to represent myself, make the following statement.

I feel HB 509 as presently written is not in the best interests of my profession.

I favor:

1. Separate licenses for Embalmers & Funeral Directors (Dual License concept).
2. A comprehensive apprenticeship program for both Embalmers & Funeral Directors spelled out in the law.
3. Special, temporary licenses for widows and legal representatives for administrative purposes only.
4. Addition of definitions to prohibit loose structure and ability for private interpretation.
5. A tightly structured disclosure of costs and services section that will prevent practices that the FTC is now investigating.
6. A law that is reflective of testimony given and at least equal to the other laws of the other 49 states and is not reflective of the whims of a few.

I oppose:

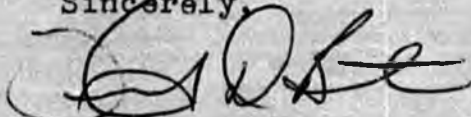
1. High academic requirements in the place of "career centered" training.
2. The loose structure of HB 509 that leaves too much room for private interpretation that may have to be settled in the courts.
3. Too much power given to the Department as outlined in the Bill. Example: the Department being given the power to decide what courses should be taken to meet educational requirements.
4. The clause in the reciprocity section that stipulates 1 year of practice prior to applying for reciprocal license.

Page-2

I did not favor HB 509 in its original state. Many changes have been made and much work has been done. However, I personally feel that HB 509 in its present form is inadequate, does not meet the needs of the practitioners in this state, nor does it meet the needs of the consumer.

If we are to develop laws, it is our duty as citizens and your duty as legislators to see that good laws are made for the benefit of all. Since HB 509 does not meet these requirements and, I feel, is just an updated version of the vagueness already on the books, I withdraw my support of it until further studies and changes are made.

Sincerely,

A handwritten signature in dark ink, appearing to read 'K. D. Burton', written in a cursive style.

Kenneth D. Burton  
Bruce Funeral Home

# Valley Memory Gardens and Mausoleum

ALASKA'S MOST BEAUTIFUL MEMORIAL PARK

OFFICE: 236 W 10th AVE ANCHORAGE  
907/272-6850



January 29, 1976  
The Honorable Bob Bradley  
Chairman House Commerce Committee  
State of Alaska  
Pouch V  
Juneau, Alaska 99801

Ref. HB 264 and HB 509

Dear Representative Bradley:

Reference is made to the forthcoming joint and House hearings on HB 264 and HB 509. For some time the Federal Trade Commission has had under investigation, the funeral industry and trade practices and has published as of August 15, 1975, "Funeral Industry Practices, Proposed Trade Regulation Rule and Staff Memorandum". It is my understanding that hearings will be held sometime in April of this year.

HB 264 and HB 509, as proposed, will give legislative sanction to Alaska funeral directors to engage in the types and practices to be found by the FTC, harmful to the public.

In this regard, I would like to draw your attention to copies of pages 1-7 of the aforementioned report, containing discussions of some of these practices and especially pages 19-20, and 85-103 wherein funeral directors have monopolized and limited competition, in particular please note the information starting on page 86. HB 509 and HB 264, while appearing to protect the consumer is actually designed to restrict trade by means of making it impossible for companies to offer a pre-arrangement service while there is no immediate stress on a family because of a recent death, but rather such type legislation is designed to take advantage of the consumer by performing their services only when a family is distraught and not always thinking clearly. This is accomplished by legislating laws to require 100% of monies received for pre-need services to be placed in trust. What seller could operate with such absolute restrictions, notwithstanding the threat of loss of license to practice and making it possible only for licensed funeral directors to sell before need?

I am in complete agreement that there should be some type of constructive legislation restricting certain funeral practices, however, I can't help but feel that this is a far more complex matter than appears on the surface, requiring a considerable amount of further study as is being borne out by the FTC investigation.

If these bills are passed in their present form, the consumer will have been denied the right of choice as to when and under what conditions he will be allowed to make final arrangements for himself or his family.

Yours truly,

  
Arthur S. Richmond,  
Valley Memory Gardens, Inc.

FUNERAL INDUSTRY PRACTICES

Proposed Trade Regulation Rule

and

Staff Memorandum



Division of Special Projects  
Bureau of Consumer Protection

August, 1975

FUNERAL INDUSTRY PRACTICES

Proposed Trade Regulation Rule

and

Staff Memorandum

August, 1975

Arthur R. Anzel, Attorney  
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The staff wishes to gratefully acknowledge the editorial assistance of Ann Stahl and the work of Rita Allen, Roselyn Alston, Kathryn Hermann, and Lorraine Swint in typing the manuscript. A special thanks is owed to Mary Forster for her special efforts and invaluable services.

This memorandum was prepared by the staff of the Commission's Bureau of Consumer Protection, Division of Special Projects. The Commission has not adopted any findings or conclusions of the staff.

UNITED STATES GOVERNMENT

# Memorandum

TO : Commission

FROM : Division of Special Projects  
Bureau of Consumer Protection

SUBJECT: Funeral Industry - File 732 3057 (Program I-12)  
Proposed Trade Regulation Rule

DATE: August 20, 1975

## INTRODUCTION

This memorandum supports the Funeral Industry Practices Trade Regulation Rule which has been proposed to correct the unfair and deceptive practices identified in the course of the staff's investigation. These abuses are industry-wide, and staff is convinced that a Trade Regulation Rule is the most direct and efficient way to eliminate them.

The staff formally proposed the funeral investigation to the Commission in July, 1973 after several months of preliminary investigation into industry conditions and consumer abuses. Staff's 239 page planning memo to the Commission <sup>1/</sup> described, in considerable detail, the industry and a number of consumer problems, and forms part of the basis for the rule we are proposing.

Following Commission approval of the formal industry-wide investigation, the staff initiated, in October, 1973 a pilot funeral price survey in the District of Columbia, the results of which were released in February, 1974. The D.C. survey was the first systematic effort to get hard data on funeral prices and practices in a particular area, and to make that data available to the public. The D.C. survey produced much useful information. <sup>2/</sup> It also inspired a number of similar surveys all over the country--by state and

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<sup>1/</sup> Division of Evaluation, Bureau of Consumer Protection, Unfair Practices in the Funeral Industry: A Planning Report to the Federal Trade Commission, June 29, 1973 [hereinafter cited as F.T.C. Funeral Investigation Planning Memo].

<sup>2/</sup> DIVISION OF SPECIAL PROJECTS, BUREAU OF CONSUMER PROTECTION, U.S. FED. TRADE COMM'N, SURVEY OF FUNERAL PRICES IN THE DISTRICT OF COLUMBIA (1974) [hereinafter cited as D.C. FUNERAL SURVEY].



local governments, 3/ consumer groups, 4/ and newspapers 5/ -- which have likewise yielded valuable data.

In addition to the price survey, the staff has obtained information from funeral directors, visits to funeral homes, industry employees and ex-employees, casket manufacturers, memorial society members, consumer interviews and complaint letters, trade journals, scholarly papers, and magazine and newspaper articles.

The information gathered by the investigation confirms the view expressed in our initial report that there are many serious abuses of consumers by large numbers of the nation's 22,000 funeral homes 6/ and consequently an urgent need exists for remedial action by the Commission.

Each year, millions of families are forced by the death of a relative 7/ to make one of the largest consumer

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3/ E.g., Arkansas; Delaware; Florida; Iowa City, Iowa; Massachusetts; Minnesota; and Syracuse, New York.

4/ E.g., Indiana Public Interest Research Group; New York Public Interest Research Group; Consumer Action of Kansas City, Missouri.

5/ Newspaper surveys have been conducted by the San Bernadino Sun-Telegraph, San Bernadino, CA; St. Petersburg Times, St. Petersburg, FL; The Cincinnati Enquirer, Cincinnati, OH; The Louisville Courier-Journal, Louisville, KY; and the Northern Virginia News, Vienna, VA.

6/ The precise number of funeral establishments is not entirely clear. The most recent figures from the Department of Commerce, Social and Economic Statistics Administration indicate that there were 20,854 funeral service and crematory establishments operating in 1972. U.S. DEP'T OF COMMERCE, SUMMARY REPORT OF THE 1972 CENSUS OF SELECTED SERVICE INDUSTRIES. The industry's largest trade association, the National Funeral Directors Association has used the figure 22,500. NATIONAL FUNERAL DIRECTORS ASSOCIATION, FUNERAL SERVICE 13 (1974). The Labor Department has quoted a figure of 23,000 and has calculated that there were 45,000 licensed funeral directors and embalmers in 1972. U.S. DEP'T OF LABOR, OCCUPATIONAL OUTLOOK HANDBOOK 174 (1974-75).

7/ There were 1,977,000 deaths in the United States in 1973. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE U.S., 51 (1974).

purchases, 8/ under severe handicaps of time pressures, emotional distress and lack of information or experience. 9/ As an FTC hearing examiner noted long ago, there are few, if any industries where the ultimate consumer is so disadvantaged or where his normal bargaining power is so diluted in a situation of such immediate need. 10/

The need for protections for funeral buyers is particularly acute because the funeral director plays two conflicting roles. His public relations image emphasizes his duties as a professional serving people at a time of particular desperation. His economic self-interest puts him in a different role: he is a salesman of goods and services to these same people; and, if he wants to prosper or even to survive, he must move his high profit lines.

This conflict is exacerbated because the image of disinterested professionalism makes the funeral director a more effective merchandiser. The more the public accepts the professional role, the less it will inquire, shop, or bargain, and the greater the opportunity for high mark-ups,

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8/ Based on the D.C. funeral survey and similar surveys across the country, consumers pay funeral directors an average of \$1100 to \$1400. Cemetery and related expenses bring the average total for funeral and burial expenses to approximately \$2000. See sources cited in notes 2-5, supra; FFDA Statistical Survey Shows Few Ratio Changes, AMERICAN FUNERAL DIRECTOR 22 (July, 1975) (1974 average funeral director charge of \$1287).

Gross receipts for funeral homes and crematories have been estimated at \$1.91 billion for 1973, \$2.00 billion for 1974, \$2.12 billion for 1975, and are projected to reach \$2.80 billion by 1980. U.S. DEP'T OF COMMERCE, U.S. INDUSTRIAL OUTLOOK WITH PROJECTIONS TO 1980, 480 (1975).

Outlays for items such as flowers (approximately \$800 million, annually), cemetery expenses (approximately \$735 million, annually), monuments and markers (approximately \$450 million, annually), and burial vaults (approximately \$305 million, annually), bring the total annual expenditures for funeral related items to approximately \$4.2 billion. See MEDIA AND CONSUMER 14 (June, 1974).

9/ The disadvantaged position of the consumer in the funeral transaction was discussed, in detail, in the planning memorandum at 64-78. See note 1 supra.

10/ See In re Casket Mfrs. Assn., 52 F.T.C. 958, 971 (1954).

unnecessary services and unscrupulous practices. Consequently, the industry tends to promote the professional image and fight anything that would interfere with it or that would permit other than disinterested organizations to come between it and the consumer. The industry is well organized in terms of state boards of regulation and trade associations 11/ and uses its advantages to limit price disclosure, low cost disposition, pre-need arrangements, and price advertising, all in the name, of course, of professional ethics and good practice.

Once the consumer comes to the funeral home, a number of sales techniques of varying unsavoriness are used to increase the amount he spends. Some of these methods are common to many industries, and normally we rely on the forces of competition and the good sense of consumers to punish those who use them and reward those who do not. This does not work for funerals because the bereaved purchaser is not emotionally able to bargain 12/ and is seldom even aware that he is being deceived or exploited.

The nature of the funeral transaction and the incentives operating in the industry have been discussed extensively in prior memoranda, and need not be reiterated in detail here. It is enough to say that the general marketing strategy of much of the industry seems to follow the following precepts:

1. Eliminate low cost alternatives to the standard funeral through control of laws, regulations, and codes of ethics.

2. Use of any means possible - laws and regulations, propaganda, refusal to deal - to stunt the development of memorial societies or pre-need societies which can bargain on behalf of the customer in a non-emotional context.

3. Make it as difficult as possible for the consumer to obtain price information in advance of need or without coming to the funeral home.

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11/ The anticipated argument that the Commission should not take action against abuses because of the presence of state regulatory boards is particularly hollow in the case of the funeral industry. See F.T.C. Funeral Investigation Planning Memo 17-30: One particularly revealing illustration is the fact that the general counsel (an active policy-maker) for the industry's largest trade association, NFDA, is also the general counsel to the conference of state regulatory boards, which proposes state regulations.

12/ Moreover, once the body is in the hands of a funeral director, the consumer is unlikely to take his business elsewhere.

4. When the purchaser comes to the funeral home, keep him confused about prices and options. Tie products together so he buys things he would not want if he thought about it. Sell him up the price line, and suggest that any thought of economy is inappropriate.

5. Because the funeral business depends heavily upon personal referrals, it is important that the confusion be total but subtle. The consumer must be confused about prices, options and requirements, but he must not be able to discern that he is being confused deliberately.

The rule proposed here attacks every part of this strategy. It is designed to provide the consumer with substantially more information on prices and choices, eliminate the devices used to obtain unfair leverage over the consumer, abolish the outright frauds and deceptions that have been structured into the industry, and free up the market so that the dealings between funeral director and customer will be more fair, and the growth of memorial societies and pre-need arrangements more possible.

Since the Improvements Act expanded the FTC's jurisdiction to cover practices that "affect" commerce as well as those "in" commerce, the Commission's authority to promulgate Trade Regulation Rules 13/ with respect to funeral abuses is beyond serious question.

Almost every funeral home has sufficient involvement in one or more of the following activities to satisfy the statutory jurisdictional prerequisites: 14/

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13/ The Commission's authority to issue Trade Regulation Rules defining certain practices as unfair or deceptive has been explicitly recognized by case. See Nat'l Petroleum Refiners Assn. v. F.T.C., 482 F.2d 672 (D.C. Cir. 1973), cert denied, 415 U.S. 951 (1974), rev'g 340 F. Supp. 1343 (D.D.C. 1972). More recently, the Commission has received explicit rulemaking authority by statute (Magnuson-Moss Warranty/FTC Improvement Act, P.L. 93-637, Sec. 202 (Jan 4, 1975)).

14/ No specific amount of sales in or affecting commerce is required; only that the amount is not de minimis. In NLRB v. Inglewood Park Cemetery Association, 355 F.2d 448 (9th Cir. 1966), the Ninth Circuit held that \$3,086.31 in out-of-state purchases (out of \$500,000 in sales receipts) was not de minimis. The Seventh Circuit has held that \$2,000 is not de minimis. NLRB v. Aurora City Lines, Inc., 299 F.2d 229, 231 (7th Cir. 1962). In Surrey Sleep Products, the Commission rejected, as clearly without merit, the argument that \$5,000 in interstate sales was de minimis. See 73 F.T.C. 523, 553 n. 3 (1968).

- purchase from out-of-state suppliers of caskets, burial vaults, and other funerary merchandise sold to customers and purchase of equipment used; 15/
- use of media and interstate communications, including the United States mail and the telephone, in connection with the arrangement and sale of and collection for funeral services and merchandise;
- sale of funeral services and merchandise to customers from different states;
- advertising in newspapers or magazines with interstate circulation, in radio broadcasts transmitted to potential customers in different states, or on billboards located on interstate highways; and
- shipment of deceased human bodies by common carrier across state lines to funeral directors located in different states and receipt for burial or other final disposition of bodies shipped across state lines from funeral directors located in other states.

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15/ Out-of-state shipment of caskets and other funerary merchandise was accepted as a sufficient basis for both "in" and "affecting" commerce jurisdiction in an antitrust action decided by a United States District Court in California. See Cathay Mortuary-Wah Sang v. Funeral Directors of San Francisco, 1965 Trade Cas. Paragraph 71, 505 (N.D. Cal.). But cf. Kalin Funeral Home v. Fultz, 313 F. Supp. 435 W.D. WA 1970), aff'd 442 F.2d 1342 (9th Cir. 1971). In Cathay it was alleged that 60% of all caskets used in San Francisco came from outside the state. The staff believes that the amount of interstate shipment of caskets would be equally high in most areas of the country.

The Cathay and Kalin decisions and the Commission's jurisdiction over funeral homes are discussed in greater detail in a 16 page memo from Arthur Angel to J. Thomas Rosch dated Jan. 17, 1975 (on file).

Given the existence of funeral problems throughout the country and the magnitude of the federal government's payments 16/ to the funeral industry, funeral practices are clearly a proper concern of the federal government.

The proposed rule is directed solely to practices of funeral directors (with the exception of the section against caskets for cremation, which must also be directed against crematories, and the section preventing interference with the market, which is directed at trade associations and others beside funeral directors).

The rule does not deal with a number of related but distinguishable consumer problems encountered in our investigation which involve funeral supply companies (casket and vault manufacturers) and cemeteries.

It is possible that some of these other kinds of problems (e.g., casket and vault warranties and manufacturer's promotional materials) can be adequately resolved by negotiation or other means short of Commission Trade Regulation Rules or lawsuits. The staff has confined its proposals to practices of funeral directors because we believe they are the most serious abuses, because we do not yet have sufficient information on cemetery and allied manufacturer practices, and because attempting to include cemetery and manufacturer abuses at the same time would make the proceedings cumbersome, overburdened and time-consuming. At some later date the staff may offer additional recommendations to deal with these other issues.

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16/ Veterans' burial benefits payments totalled for fiscal year 1975, an estimated \$134,944,000. VETERANS ADMINISTRATION, GENERAL OPERATING EXPENSES, BENEFIT APPROPRIATIONS AND FUNDS 1976 Fiscal Year, vol. 1 at 5. Social security and other governmental benefits bring the federal government's annual funeral-related expenditures to nearly \$500 million.

§ 453.6 Interference with the market.

In connection with the sale or offering for sale of funeral services and/or merchandise to the public, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice for any funeral service industry member:

(a) [Offering of inexpensive funerals] or any person, partnership, or corporation, directly or indirectly, to prohibit, hinder or restrict, or attempt to prohibit, hinder, or restrict: (1) the offering, or advertising of the availability of, low-cost funerals, immediate cremation or other forms of disposition, or arrangements for funeral services in advance of need by any funeral director, memorial society, or other person, partnership or corporation;

(2) contracts or arrangements between memorial societies and any funeral director or other person, partnership or corporation providing services for the disposition of deceased human bodies.

(b) [Price advertising] or any other person, partnership or corporation, directly or indirectly, to prohibit, hinder or restrict, or attempt to prohibit, hinder or restrict, the disclosure of accurate price information regarding funeral merchandise or services by any funeral director, memorial society, or other person, partnership or corporation offering services for the disposition of deceased human bodies, whether such disclosure is made by means of advertisements in print media or broadcast media, or in any other manner.

(c) [Reliance on price advertising restrictions] to change, restrict, make or fail to make any disclosure of accurate price information about any funeral merchandise or service by print media, broadcast media, telephone, leaflets, mailings, or in any other way, because of or in connection with any law, rule, regulation or code of conduct of any non-federal legislative, executive, regulatory or licensing entity or any other entity or person whatsoever, including but not limited to professional associations.

(d) [Price availability notice] to fail to display prominently, in any advertising or promotional materials in print or broadcast media of funeral merchandise or services, the following notice:

"Funeral home prices vary substantially.  
For information on our prices for funeral  
merchandise and services, call:  
[Telephone number]."

§ 453.7 Retention of documents.

To assure compliance with the provisions of this part and prevent future use of the unfair and deceptive practices it prohibits, all funeral homes subject to the provisions of this part shall be required to retain and to make available for inspection by Federal Trade Commission officials, upon request, true and accurate copies of the written disclosures or price lists required by § 453.3 (a)(2) and § 453.5 (b)(1), (d)(1), and (e)(1), and all revisions thereof, for at least three years after the date of their last distribution to customers, and a copy of each selection memorandum signed by a customer, as required by § 453.5 (f)(1), for at least three years from the date on which the memorandum was signed.

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## Section 453.6 Interference with the market

### The Practice

As is obvious from the foregoing discussion, much of the funeral director's power to force the consumer to increase his expenditures arises from the ignorance, confusion and emotional stress of the funeral situation. The problem is exacerbated because no individual consumer deals often enough with a funeral home to become knowledgeably wary.

The advantages of the funeral director could be offset in a number of ways. A potential decedent could make his own arrangements on a pre-need basis by entering into a firm contract arrived at in a less emotional context. While useful, the value of such a technique is limited. Most people do not like to make their own funeral arrangements, since it reminds them of some unpleasant facts. In addition, even if the decedent has entered into a firm agreement, the family is still vulnerable to the pressure of the situation, for arrangements can be revised.

A second useful offset to the funeral director's power would be price advertising, now almost nonexistent. <sup>153/</sup> Price advertising would give consumers information about the general standards and prices in the industry.

A third possibility, and possibly the most fruitful, is for consumers to organize. Memorial societies can develop the expertise necessary to bargain with funeral homes and can represent the interests of consumers in a way that funeral directors now profess to do.

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<sup>153/</sup> A 1967 survey found that only 2% of the nation's 22,500 funeral homes engaged in price advertising. Fulton, The Funeral and the Funeral Director: A Contemporary Analysis (1967), in STUDIES OF ATTITUDES TOWARD DEATH, FUNERALS AND FUNERAL DIRECTORS 39. However, there are indications that 2% may be a high estimate. For example, in a study conducted in Philadelphia, only one of the city's 364 funeral homes reported that it had advertised prices in recent years. G. Kissel, An Analysis of the Market Performance of the Funeral Home Industry in Pennsylvania 40, (1970) (unpublished Wharton School of Business M.B.A. thesis) [hereinafter cited as Kissel]. Another industry expert has stated that approximately 3% of funeral industry revenues are devoted to advertising, most of which is institutional rather than price advertising. Interview with Dr. Roger Blackwell, Professor of Marketing, Ohio State University, in Columbus, Ohio, May 12, 1975. What price advertising does exist, is likely to be highly concentrated in a particular region (e.g., Calif.) with most other areas having virtually none.

Two kinds of barriers exist to the use of these devices to reform funeral practices. The first consists of cultural barriers. It is far from clear that consumers are much concerned about the lack of price advertising. The psychological pressure to avoid death-related issues is strong. Additionally, much of the public has been conditioned successfully to eschew price considerations. Similar barriers exist to the use of pre-need contracts and memorial societies. Both require a consumer to advert to the future fact of his own death, an idea which most of us would prefer not to think about.

However, funeral directors prefer not to rely solely on these cultural barriers and have reinforced them with an elaborate web of state and private restrictions. Staff has more information on advertising restrictions than on the others, and the situation with respect to such restrictions is set forth in some detail. Other types of restrictions are then discussed to show the actual and potential existence of the same types of suppression of market forces.

#### 1) The Practice: Price Advertising Restrictions

State restrictions on price advertising vary considerably. In several states, such as Massachusetts and Nebraska, advertising of prices for funeral goods or services is specifically prohibited by statute, while in others, such as Texas, statutes against solicitation of business by funeral directors may be used by state licensing boards to discourage price advertising. Similarly, price advertising is prohibited or severely restricted by regulations of the state licensing board in several states. <sup>154/</sup> Frequently, these administrative proscriptions are enacted pursuant to a legislative delegation of rulemaking power to the board, which exercises its authority by defining such statutory terms as "gross misconduct," "unethical behavior," and "false and misleading advertising" to include price advertisements. <sup>155/</sup> In other states, the staff believes

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<sup>154/</sup> E.g., Louisiana, Missouri, Oregon, Utah, Virginia, West Virginia, and Wyoming.

<sup>155/</sup> In Quesenbery v. Estep, 142 W. Va. 426, 95 S.E.2d 832 (1956), the West Virginia Supreme Court upheld the validity of a board regulation which declared:

All price advertising is here declared to be unethical without exception...

95 S.E.2d at 837. Cf. Boydston v. State, 277 P.2d 138 (Okla. 1954): "Of course general advertising in itself is a character of seeking or soliciting business or patronage." At 142.

that the regulatory boards have a strong prejudice against price advertising. This bias, when coupled with the board's power to revoke or suspend licenses, effectively discourages any price advertising. 156/

Legal restrictions against price advertising are policed by the state morticians' licensing boards, which possess broad powers to revoke or suspend licenses. Composed in most states of funeral directors only, 157/ these boards have been used to protect the interests of industry members at the expense of competition and consumer interests. 158/ regulations creating barriers to entry and restricting marketing techniques have been used to suppress competition between industry members, and, explicitly or implicitly, price advertising has been opposed. 159/ It is, safe to

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156/ In response to a staff request for information on state regulations and statutes related to the funeral industry, replies were received from the executives of most state boards. Some of these responses revealed an opposition to price advertising. South Dakota's Board replied that price advertising "is generally not done as it is considered unethical. At best it would be considered misleading." Letter from Donald B. Clements, Secretary-Treasurer, South Dakota State Board of Funeral Service, to Arthur Angel, January 15, 1974. The response from Arkansas stated that the only bar to price advertising there was "good taste, knowing there is no absolute way of price advertising in an ethical manner." Letter from John W. Baker, Secretary, Arkansas State Board of Examiners and Funeral Directors, to Arthur Angel, January 7, 1974..

157/ In all but eighteen states, the state board charged with regulating funeral practices is composed exclusively of funeral directors. Public representatives are included on the boards of six of the eighteen states: Massachusetts, California, Minnesota, Arizona, Delaware, and Michigan. The other twelve have a non-industry representative who usually is a government official such as a public health or vital statistics official.

158/ Kissel, supra note 153, at 73-77; BOWMAN 64-65; Blackwell, Price Levels in the Funeral Industry, 7 Q. REV. ECON. & BUS. 75, 80-84 (1967) [hereinafter cited as Blackwell]; Hearings on S. Res. 262 (Antitrust Aspects of the Funeral Industry) Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary, 88th Cong., 2nd Sess. passim (1964) [hereinafter cited as 1964 Hearings].

assert that state regulatory boards are antagonistic to advertising as a competitive weapon. 159/

When the price for risking the disapprobation of the board may be loss of one's livelihood, price advertising usually will be eschewed. Some challenges, however, have been mounted against state board regulations that prohibit price advertising. In Quesenbery v. Estep, 160/ a West Virginia statute which prohibited unethical advertising had been defined by a board rule to include a ban on all price advertising. Focusing primarily on the question of the validity of the delegation of the state's police power to the board, the court upheld the delegation of broad, discretionary rulemaking power to the board and held that the challenged rule was a valid exercise of that power.

More recent cases have declined to follow Quesenbery. Grissom v. Van Orsdel 161/ explicitly declined to follow the West Virginia decision in holding that the Florida board's restrictions on advertising exceeded its statutory authority and thereby "represented an unlawful restraint on the use and enjoyment of the defendant's business, in violation of the constitutional guarantees on which defendant relied." 162/ A similar regulation of the Connecticut State Board of Embalmers and Funeral Directors was declared invalid by a Connecticut court on the ground that a statute prohibiting unethical advertising provides no authorization for a regulation against price advertising. 163/ In two other cases, state courts have found statutes restricting price advertising to be constitutionally defective. 164/

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159/ Blackwell, supra note 158, at 80-84.

160/ 142 W. Va. 426, 95 S.E.2d 832 (W. Va. 1956).

161/ 137 So.2d 246 (Fla. Dist. Ct. App. 1962).

162/ Id. at 248.

163/ Taylor & Modeen v. O'Connor, Civil No. 130602 (Conn. Super. Ct. 1963), in 1964 Hearings 241.

164/ Osborn Funeral Home v. Louisiana State Bd. of Embalmers, 216 So.2d 145 (La. Ct. App. 1968) (statute which prevented class of funeral directors from advertising credit terms denied class equal protection of laws); Needham v. Proffitt, 220 Ind. 265, 41 N.E.2d 606 (1942) (prohibition on print advertising was unconstitutional discrimination against print media).

Whether or not legal sanctions exist, price advertising is widely viewed by the industry as "unethical":

To speak of price advertising as being unethical or unprofessional may be accepting industry euphemisms for the policy of restricting competition; in any case, price advertising meets with strong disapproval in the industry. 165/

Trade associations have frequently sought to suppress such advertising either by adopting formal codes of ethics which oppose it or by using "moral suasion" to coax members to refrain from price advertising. Numerous instances have been reported whereby trade associations have expelled or otherwise harassed funeral directors who advertise the prices of their goods and services. 166/

These restraints have been legally challenged successfully. In a 1968 consent decree, the National Funeral Directors Association settled an antitrust suit brought by the Justice Department by agreeing not to keep anyone from advertising the prices of funerals. 167/ Prior to the entry of the decree, the NFDA disciplined and expelled price advertisers. The consent agreement required the Association not only to drop this practice but also to exclude any affiliated group which limits or restricts price advertising. The continuing absence of price advertising suggests that compliance with the order may be lacking. 168/

Before the Justice Department decree, a Wisconsin Circuit Court held that the NFDA and its state affiliate, the Wisconsin Funeral Directors Association, had violated

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165/ Kissel, supra note 153, at 40. See also Blackwell, supra note 157, at 79; The Oak Ridge-Knoxville Way of Death, supra note 18, at 1.

166/ The Oak Ridge-Knoxville Way of Death, supra note 18 at 1; Sansing, Deathstyles, THE WASHINGTONIAN, Aug., 1973, at 54; J. RICH & L. PLATT, FUNERAL IN THE CITY OF SYRACUSE 62-63 (1973); interview with industry informant, supra note 18; interview with Jessica Mitford, author, in Berkeley, Cal., Jan. 9, 1973; interview with union members, supra note 45; CAL. DEP'T JUSTICE, THE FUNERAL INDUSTRY pt. II, at 12 (1970) (interview with funeral director).

167/ United States v. National Funeral Directors Ass'n, 1968 Trade Cas. Paragraph 72, 529 (D. Wis.).

168/ Kissel, supra note 153, at 29. See also sources cited in note 166 supra.

the state's antitrust law by engaging in a conspiracy to suppress competition among funeral directors in the pricing of services and supplies through a policy of refraining from cost advertising. 169/ Rejecting the defendants' contention that the "professional" nature of a funeral director's services justifies curbs on advertising, the court stated:

After a careful review of the record and analysis of the cases, the court has been constrained to the conclusion that the restraint of the code and by-law do not meet the test of the rule of reason either on the basis of professionalism, uniqueness, the public or quasi-public nature of the vocation or business, or a trade association regulation. 170/

This myriad of advertising restrictions contributes to the lack of price competition in the funeral industry--a condition acknowledged by industry consultants 171/ as well as scholarly observers. 172/ In an industry characterized by inelastic demand, competitive advertising would stimulate a redistribution of business, since new business cannot be generated. Recognizing this harsh fact of competitive life, funeral directors find it mutually advantageous to refrain from advertising prices.

The result of this non-competitive behavior has been considerable excess capacity and an oversupply of small firms. 173/ Since the individual entrepreneur's share of the market is insulated from the outside pressure of competition, inefficiencies lead directly to higher costs. Industry-wide data suggests that the industry is "operating at price levels which are based upon the cost curves of the

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169/ Wisconsin v. National Funeral Directors Ass'n, 1967 Trade Cas. Paragraph 72,289 (Wis. Cir. Ct.).

170/ Id. at 84,720.

171/ A. RAPPAPORT, AN ANALYSIS OF FUNERAL SERVICE PRICING AND QUOTATION METHODS 7 (1971).

172/ Kissel, supra note 153; Blackwell, supra note 158.

173/ 1964 Hearings 35, 185; Kissel, supra note 153 at 54; Blackwell, supra note 158, at 76-78; HIGH COST OF DYING 17; AMERICAN WAY OF DEATH 41.

many small firms rather than upon the cost curves of large firms which can spread overhead costs over large volume." 174/

Inefficiency is protected, moreover, by the unique nature of the consumer transaction, a purchase in which the decision-making has been left solely to the seller--the funeral director. This phenomenon, which Kissel terms "one of the most significant aspects of market structure," 175/ has contributed to the formation of an industry market structure which Kissel describes as one composed of "atomistic monopolies" and which Blackwell calls "a composite of local markets which possess the characteristics of oligopoly involving a differentiated product." 176/ For the consumer, the effect of these market conditions is an artificially high price structure.

Although most funeral directors claim that funeral purchasers are not interested in price information, this self-serving statement may also be self-fulfilling, for few consumers have ever had an opportunity to obtain such information. Nevertheless, the consumer expenditure involved represents a substantial purchase by millions

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174/ Blackwell, supra note 158, at 77. See also, AMERICAN FUNERAL DIRECTOR, 20 (May 1974) (remarks of Walter B. Chasen, an official of the National Funeral Directors Association):

"Why are costs so high for building occupancy? I blame overinvestment--funeral homes are being built that can only be described as monuments to the owners' pride. Structures are being planned without regard to potential income possibilities. In many smaller communities the funeral home is not in conformity with the life style of the area. When you read about these new structures in the journals, they proudly boast of expensive imported furnishings, Taj Manal landscaping, transmitters that will broadcast funeral services to distant points, sunken gardens, flaming torches, waterfalls, acres of parking. The net result is an investment ranging to four and five thousand dollars of real estate for every adult service conducted. It has been reliably estimated that over fifty percent of all funeral homes are overinvested.

175/ Kissel, supra note 153, at 9.

176/ Id. at 82; Blackwell, supra note 158, at 75.

of buyers every year. <sup>177/</sup> Frequently, funeral arrangements are made under severe time constraints by bereaved persons whose grief and disorientation preclude the exercise of normal care and judgment. Without knowledge of legal requirements or possible alternatives, funeral buyers in these circumstances are at an extreme disadvantage vis-a-vis the mortician.

In this context, price information is essential to enable consumers to make rational purchase decisions. Funeral purchasers need information about the prices, options and policies involved in selecting particular merchandise or services. Armed with such information in advance, the consumer will be in a better position to protect his own interest in negotiating a transaction with a mortician, for most purchasers deal with only one funeral director. <sup>178/</sup> Moreover, increased availability of cost data will enable consumers to shop comparatively if they so desire. The ability to shop comparatively in advance may also stimulate increased advance planning for funeral arrangements and permit greater consideration of purchase decisions before such decisions become imperative.

As indicated in the previous discussion of the anti-competitive effects of price advertising restrictions and the absence of competition in the industry, price advertising should spur competition. In striking down the price advertising restrictions imposed on the Wisconsin funeral industry, the court expressed its rationale:

The basis of the common law and statutory prohibitions against unreasonable restraint of trade is the theory that competition is the life of trade and benefits the public interest...

Advertising is a means or device calculated to stimulate competition in trade and generally benefiting the public. <sup>179/</sup>

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<sup>177/</sup> For 1974, funeral homes' gross receipts were estimated to be \$2.0 billion. U.S. DEP'T OF COMMERCE, U.S. INDUSTRIAL OUTLOOK--1975, WITH PROJECTIONS TO 1980, at 420 (1975). See also D.C. FUNERAL SURVEY 25-34.

<sup>178/</sup> BOWMAN 52; 1964 Hearings 185; Kissel, *supra* note 153, at 9-12; A. RAPPAPORT, *supra* note 171; Madden, *supra* note 91.

<sup>179/</sup> Wisconsin v. National Funeral Directors Ass'n, 1967 Trade Cas. Paragraph 72,289 (Wis. Cir. Ct.), at 84,720.

By increasing competition, firms would be able to obtain additional market share through the promotion of better facilities or lower prices. Inefficient firms would be weeded out of the marketplace, and the economies of scale associated with large-scale operations should be realized. 180/ Where competitive rivalry exists, the result should be lower prices for the consumer. 181/

It is recognized, however, that the elimination of price advertising restrictions will not necessarily result in an upsurge of such ads, for price advertising is scant or absent even in localities where such restrictions apparently do not exist. 182/ The reasons for this reluctance to advertise prices have been traced, as mentioned earlier, to the prevailing market conditions in the industry. Consequently, the proposed rule contains a requirement that the availability of price information be advertised. By proposing such a disclosure, the staff believes that the objectives aptly summarized by Blackwell will be promoted:

Because consumers are uninformed, purchase infrequently, and avoid prepurchase planning, regulatory codes should be rewritten to encourage rather than to discourage the type of marketing strategy which stimulates more attention to the funeral purchase decision and which disseminates information about comparative facilities, services, and prices. . . . Competitive rivalry is not restricted to price, of course. Other variables more valued by the consumer than price may be emphasized; but in a competitive market, the consumer should be the final judge as to which marketing mix best satisfies him. 183/

## 2) The Practice: Other Restraints

Attempts to limit or suppress competitive forces are not confined to price advertising restrictions. The introduction of cost-saving services, such as pre-need contracts and immediate cremations, has been hampered by a number of

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180/ Blackwell, supra note 158, at 82-83; Kissel, supra note 153, at 54.

181/ Kissel, supra note 153, at 55, 116-117; Blackwell, supra note 158, at 83.

182/ See note 153, supra, and accompanying text.

183/ Blackwell, supra note 158, at 82-83.

public and private restraints similar to those encountered by potential price advertisers. In some cases, state board sanctions have curtailed the use of these marketing devices; 184/ in others, aggressive competition has been formally opposed by industry-wide associations. 185/ This part of the proposed rule does not purport to override any state laws or regulations in areas other than price advertising; it does, however, prohibit private interference with the offering or promotion of inexpensive alternatives to the traditional funeral.

Pre-need contracts, whereby a person makes funeral arrangements during his or her lifetime, have been hailed as an opportunity for the customer to make sensible purchasing decisions without the pressure imposed by time and bereavement at death. 186/ Since a clear-eyed purchaser may be apt to spend his money more carefully than grieving survivors, the industry has not looked kindly upon these transactions. 187/ Howard Raether, the Executive Secretary of the National Funeral Directors Association, cautioned his colleagues:

Are you ready, willing and able to become part of a program that is going to lower the quality of the average funeral service selected to the point where you will find it difficult, if not impossible, to stay in business rendering the service you now give?

If funeral directors insist on soliciting pre-need funerals, they are in fact prearranging the funeral of their profession. 188/

Because immediate cremation reduces the range of merchandise and services which can be sold, 189/ it presents a cheaper method of disposition than the traditional funeral

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184/ E.g., Oklahoma ex rel. State Bd. of Embalmers & Funeral Directors v. Guardian Funeral Home, 429 P.2d 732 (Okla. 1967).

185/ E.g., Utah Funeral Directors & Embalmers Ass'n v. Memorial Gardens of the Valley, Inc., 17 Utah 2d 227, 408 P.2d 190 (Utah 1965); Cedar Memorial Park Cemetery Ass'n v. Personnel Associates, 178 N.W.2d 343 (Iowa 1970).

186/ See generally, Sher, Funeral Pre-arrangement: Mitigating the Undertaker's Bargaining Advantage, 15 STAN. L. REV. 415 (1963).

187/ See cases cited in note 185, supra.

188/ Cited in 1964 Hearings at 106.

189/ But see the discussion of the casket-for-cremation requirement supra, at 28-33.

service. The growth in popularity of cremations 190/ has, therefore, been viewed with apprehension by members of the funeral industry, whose opposition to cremation "clubs" has at times taken more active forms. In California, a low-cost cremation firm was harassed by the industry, which sought to induce crematories to cease dealing with the firm and which instigated an unsuccessful move to place the firm under the jurisdiction of the state funeral directors' board. 191/ Moreover, staff investigations revealed that one of the industry's largest chains established a competing subsidiary and indications that its purpose may have been to drive the independent firm out of business through predatory pricing. Other incidents of harassment by industry-dominated state boards have been reported in Florida and Arizona.

Several examples of industry interference with the operations of memorial societies have been documented. These groups, which contract with cooperating funeral directors to furnish various specified types of funerals to their members at prescribed prices, are sometimes able to secure more favorable rates by virtue of their collective purchasing power. Society leaders are familiar with funeral practices and have acquired expertise in dealing with morticians. These factors, which permit the consumer to make funeral arrangements in a more advantageous bargaining position, have created industry opposition to memorial societies and the funeral directors who cooperate with them.

In Massachusetts, the state board coerced seven cooperating morticians into severing their ties with the nonprofit New England Memorial Society, and the Society claims that no Massachusetts funeral director will enter into a written contract with a memorial society for fear

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190/ See, e.g., Roberts, Cremation Gaining Favor in U.S., N.Y. Times, Dec. 6, 1970, at 1; Voelker, The American Style Funeral Fights for Its Life, Pittsburgh Post-Gazette, April 10, 1972, at 1; Bonin, Ashes to Ashes or Dust to Dust?, Miami Herald, April 21, 1974 (Tropic Magazine), at 18.

191/ The firm's president labeled the latter attempt as "having the railroads regulate the airlines". A Move to Embalm Cremation Clubs, BUS. WEEK, Sept. 21, 1974, at 89.

of license revocation. 192/ A Knoxville, Tennessee funeral director was ostracized by other funeral directors in the area for advertising prices and dealing with memorial societies. 193/ The harassment extended to an alleged boycott by local suppliers; one supplier who did deal with the funeral home was reportedly "cut off" by other funeral directors. Moreover, any Tennessee funeral director who contracts with a memorial society is threatened with loss of license by the state board. 194/

A San Francisco funeral director who was expelled from the NFDA alleged that his expulsion was due to his promotion of low-cost funerals, his price advertising, and his cooperation with the Bay Area Funeral and Memorial Society (whose founders included author Jessica Mitford and her husband). 195/ Since the mortician had been advertising prices for some time, there was speculation that his dealings with the memorial society prompted his expulsion. 196/

Such attempts to harass the activities of firms providing more economical funeral services help to continue the industry's insulation from the forces of price competition. Many of these efforts have been organized by industry members, who have sought to protect their status (and preserve their inefficiency) by limiting the choices that would otherwise be available to consumers. By declaring market interference on the part of private parties, whether on an individual or a group basis, to be unfair, the rule seeks to make the option of low-cost funeral services a viable one.

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192/ Interview with Cmdr. R. F. Armknecht, Dr. George Richardson and Rev. Frances Caswell, Memorial Society of New England, in Brookline, Mass., Dec. 11, 1972.

193/ The Oak Ridge-Knoxville Way of Death, supra note 18, at 1.

194/ Id. at 3.

195/ See Cathay Mortuary-Wah Sang v. Funeral Directors of San Francisco, Inc., 1965 Tr. Cas. Paragraph 71,505 (N.D. Cal.).

196/ Interview with Jessica Mitford, supra note 166.

### 3) Discussion of Section 453.6

#### The Rule

##### (a) Offering of Inexpensive Funerals

or any other person, partnership or corporation, directly or indirectly, to prohibit, hinder or restrict, or attempt to prohibit, hinder or restrict,

(1) the offering, or advertising of the availability of, low-cost funerals, immediate cremation or other forms of disposition, or arrangements for funeral services in advance of need by any funeral director, memorial society, or other person, partnership or corporation;

(2) contracts or arrangements between memorial societies and any funeral director or other person, partnership or corporation providing services for the disposition of deceased human bodies.

#### Effect of the Rule

Paragraph (a) of Section 453.6 deals with private attempts to restrict the availability of alternatives to the traditional, costly funeral service. By expanding the application of the rule to cover any other "person, partnership or corporation", this rule provision, by definition, 197/ also applies to trade associations or other industry groups.

As the previous discussion suggests, lack of competition in the funeral industry is reflected by an oversupply of funeral homes. In such a setting, the low number of cases which this market structure allots to each home must yield a profit. To remain in business, therefore, a funeral home will usually have to sell more "Cadillacs" than "Volkswagens", (or charge "Cadillac" prices for Volkswagens) and the nature of the funeral transaction permits this tilt toward high-priced entries. When less expensive methods of human disposition have been introduced, therefore, the reception in the industry has been frequently hostile. Several examples presented to the staff during the course of the investigation reveal that antagonism toward cost-cutters, especially among some trade associations, has at times been transformed into overt interference with the former's methods of operation.

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197/ See rule definition (d).

Under paragraph (a)(1) of the rule, private interference with the offering or advertising of cremations, pre-need contracts, and inexpensive funeral arrangements is declared to be an unfair act or practice. For example, activities which induce suppliers to cease dealing with funeral homes promoting low-cost funerals, cremations, or pre-need contracts would be prohibited, and trade association sanctions against funeral directors who offer these alternatives would also run afoul of the rule. Harassment of low-cost cremation companies by funeral directors or trade associations--exemplified by reported incidents in Florida and California--would likewise be prohibited by paragraph (a)(1).

Interference with the efforts of memorial societies to make funeral arrangements for their members and retaliatory acts taken against cooperating morticians are the targets of paragraph (a)(2). Memorial societies represent valued alternatives to many persons who prefer to deal with a group versed in experienced purchasing than with an experienced seller in an individual, emotion-wracking transaction. Because memorial societies can often offer substantial savings to their members, they are looked upon with disfavor from many in the trade, and those funeral directors who do enter into arrangements with them may be harassed by their colleagues. Under this paragraph, ((a)(2)), it is an unfair act or practice for any private party, including trade associations, to prohibit, hinder, or restrict any such existing contractual relations or any future transactions whereby memorial societies seek to obtain services for the disposition of their deceased members.

#### The Rule

##### (b) Price Advertising

or any other person, partnership or corporation, directly or indirectly, to prohibit, hinder or restrict, or attempt to prohibit, hinder or restrict, the disclosure of accurate price information regarding funeral merchandise or services by any funeral director, memorial society, or other person, partnership or corporation offering services for the disposition of deceased human bodies, whether such disclosure is made by means of advertisements in print media or broadcast media, or in any other manner.

### Effect of the Rule

The foregoing analysis of price advertising restrictions in the funeral industry has indicated that price advertising is virtually non-existent. 198/ While state laws and regulations--which are addressed by paragraph (c)--have contributed to the absence of price advertising, self-policing by industry trade groups and pressure from other funeral directors share the responsibility for restricting the flow of price information to the public. 199/ Under paragraph (b), all restrictions by any person, partnership, or corporation on the disclosure of accurate price information about any funeral product or service are declared unfair acts or practices.

The purpose of this provision is to remove private impediments to the accurate disclosure of price information by funeral directors who choose to advertise. Unlike paragraph (d), it creates no specific duty to disclose any particular information, but seeks to allow funeral directors who choose to advertise prices to do so freely. Again, the rule's coverage is broadened to include any other "person, partnership or corporation" in the scope of its prohibition, so that efforts by trade associations or others to restrict price advertising by their members (e.g., codes of ethics with accompanying disciplinary sanctions) will violate the rule.

Paragraph (b) parallels proposed Rule I of the Disclosure Regulations Concerning Retail Prices for Prescription Drugs. 200/ As shown, similar extralegal and semi-official restraints on the advertising of prices exist in the funeral industry and deserve similar treatment by the Commission. Here, too, price advertising is widely regarded as unprofessional or unethical, and the consumer suffers from the dampening effect on competition and from an inability to compare alternatives. In both cases, the removal of private restraints is an essential step toward the increased disclosure of price information.

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198/ Note 153 supra.

199/ Since the state regulatory boards are controlled by the industry (note 156 supra), it would not be incorrect to state that the industry, by one means or another, bears the entire responsibility for price advertising restrictions.

200/ 40 Fed. Reg. 24031 (June 4, 1975) (proposed Trade Regulation Rule).

## The Rule

### (c) Reliance on Price Advertising Restrictions

to change, restrict, make or fail to make any disclosure of accurate price information about any funeral merchandise or service by print media, broadcast media, telephone, leaflets, mailings, or in any other way, because of or in connection with any law, rule, regulation or code of conduct or any non-federal legislative, executive, regulatory or licensing entity or any other entity or person whatsoever, including but not limited to professional associations.

### Effect of the Rule

Like paragraph (b) of the rule, this paragraph tracks the requirement imposed by the Prescription Drug Rule 201/ in order to overcome the same obstacles to price advertising: restrictive state laws and state licensing board regulations. In a number of states, the staff's investigation has found that price advertising is forbidden by statute, by licensing board regulations or by the board's interpretation of the statute or regulations. 202/ Similar treatment of these official restraints is accordingly proposed under the rationale espoused in the Prescription Drug Task Force Report. 203/

Under paragraph (c), it is an unfair act or practice for a funeral home to change, restrict, make or refuse to make any disclosure of accurate price information about any funeral product or service because of any law, rule or code of conduct of any non-federal legislative, executive, regulatory or licensing entity or any other entity or person, including trade associations. The purpose of this section is to create a duty on the part of funeral service industry members not to be influenced by or to rely upon such laws, regulations, or codes in making decisions on whether and how to make disclosures of prices of funeral merchandise and services. By forcing a conflict between this federally created duty and inconsistent existing state laws or state board regulations, this provision seeks to preempt repugnant state law. In promulgating the rule, the Commission is declaring federal law under the authority of the Federal Trade Commission Act; pursuant to the supremacy clause of the United States Constitution, this

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201/ Id. Rule II(b)(1).

202/ See text at note 154, supra.

203/ FTC Staff Report, Prescription Drugs: Retail Price Disclosure (Jan. 28, 1975).

rule, as an interpretation of the Federal Trade Commission Act, will become the supreme law of the land on the matters it covers and within the confines of the Commission's jurisdiction.

This paragraph requires each funeral industry member to ignore any non-federal regulation relating to the accurate disclosure of funeral prices. At present, a funeral service industry member must weigh and consider the possible repercussions of violating both private and official restrictions if he wishes to disclose prices. Under this provision, a mortician must act as if there were no requirements governing funeral price disclosures other than the rule. His failure to eliminate all consideration of these state or private restraints in order to disclose price information adequately would therefore constitute an unfair act or practice under paragraph (c).

#### The Rule

##### (d) Price Availability Notice

to fail to display prominently, in any advertising or promotional materials in print or broadcast media of funeral merchandise or services, the following notice:

Funeral home prices vary substantially.  
For information on our prices for  
funeral merchandise and services, call:  
{Telephone number}.

#### Effect of the Rule

Paragraph (d) requires that a funeral industry member who chooses to advertise or to distribute promotional material in any media must disclose that funeral prices vary and that telephone disclosure of the prices of individual products and services can be obtained by calling the funeral home. While the rule does not go so far as to mandate advertising, it does require that the price availability notice appear in all media promotional materials used by the funeral home.

The use of affirmative disclosures in advertising has been a remedial tool whose implementation is within the discretion of the Commission. In requiring health warnings on cigarettes to correct the effects of deceptive non-disclosure of the dangers inherent in smoking, the Commission stated:

The question of whether in a particular case to require disclosure in advertising cannot be answered by application of any hard-and-fast principle. The test is simple and pragmatic:

Is it likely that, unless such disclosure is made, a substantial body of consumers will be misled to their detriment? 204/

Although the Funeral Trade Regulation Rule is predicated on Section Five's proscription against unfair acts or practices more than deception, consumer injury likewise results from the widespread failure to advertise prices or the suggestion that price comparisons are inappropriate in purchasing funeral services.

As shown, the noncompetitive structure of the funeral industry market and the peculiarly captive nature of the funeral transaction have led to a unique situation in which there are too many sellers charging too high prices to buyers who have become accustomed to simply paying the final bill. Unlike the prescription drug industry, where large chains have long been clamoring for an opportunity to advertise prices, the funeral industry has maintained a virtually unanimous stance against price advertising. The apparent removal of public and private restrictions to such advertising in some areas has not stimulated promotional efforts in these localities. 205/ In an industry where price considerations have been purposely downplayed, the required message is essential to inform consumers that price information is an appropriate concern and is available. As a corrective measure, 206/ the disclosure requirement is reasonably related to the consumer injury resulting from the previous absence of funeral price information. If effective, the message will encourage price comparisons and price competition.

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204/ Statement of Basis and Purpose of Trade Regulation Rule 408, Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking, 29 Fed. Reg. 8324, 8352 (1964).

205/ Notes 153 and 168 supra.

206/ Moreover, under Sec. 202 of the Magnuson-Moss Warranty--Federal Trade Commission Improvement Act, P.L. No. 93-637 (Jan. 4, 1975), a Commission rule may include requirements "prescribed for the purpose of preventing such [unfair or deceptive] acts or practices." The disclosure of the availability of price information may be viewed as a means by which the purchaser can minimize the seller's bargaining advantage (and use of unfair tactics) by familiarizing himself with aspects of the transaction.

At this point, the staff does not believe that the additional costs imposed by the requirement will be prohibitive. The rule does not require advertising, but those funeral industry members who choose to advertise must include the few words of the price availability notice. Comment shall, of course, be received on the cost issue during the rulemaking proceeding. Unless the ineffectiveness of the notice can be definitively shown, the staff believes that any additional costs will not be prohibitive in light of the anticipated beneficial effects resulting from the infusion, however limited, of price competition into the funeral marketplace.

THE PRECEDING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

THE FOLLOWING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

From colonial days until the 19th century, the American funeral was almost exclusively a family affair, in the sense that the family and close friends performed most of the duties in connection with the dead body itself.

It was they who washed and laid out the body, draped it in a winding sheet, and ordered the coffin from a local carpenter.

It was they who carried the coffin on foot from the home to the church and thence to the graveyard and who frequently -- unless the church sexton was available -- dug the grave.

Funeral services were held in the church over the pall covered bier and a brief committal prayer was said at the gravesite.

Between the death and the funeral, the body lay in the family parlor where the mourners took turns watching over it, the practical reason for this being the ever present possibility that signs of life might be observed.

The first undertakers were drawn mainly from three occupations, all concerned with some aspect of burial. The livery stable keeper, who provided the hearse and funeral carriages, the carpenter or cabinet maker who made the coffins and the sexton, who was generally in charge of bell

colling and grave digging. In some of the larger cities, midwives and nurses advertised their services as occupational layers out of the dead and were so listed in city directories. The undertaker's job was primarily custodial. It included supplying the coffin from a catalogue or from his own establishment, arranging to bring folding chairs, taking charge of the pall bearers, supervising the removal of the coffin and loading it into the hearse, and in general doing the necessary chores until the body was finally lowered into the grave.

Shortly before the turn of the century, the undertaker conferred upon himself the title of "funeral director".<sup>2</sup>

Today, when a death occurs, a member of the family of the deceased calls the funeral director, who obtains such information as the name and age of the deceased, the name of the attending physician and the cause of death. The funeral director makes contractual arrangements for his services, secures the requisite information for newspaper

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<sup>2</sup> Mitford, The American Way of Death, pp. 199-200 (1953).