

VIA FAX

MEMORANDUM

To: State Funeral Directors Associations

From: Irwin W. Shipper, CCE, Chairman
ICCFA Government and Legal Affairs Committee

Date: April 12, 2010

Re: H.R. 3655, The Bereaved Consumers Bill of Rights Act

I am taking this unusual step of contacting you directly because we are facing a most unusual bill in the Congress of the United States that could change the way we do business and literally put many of us out of business. I am referring to H.R. 3655, the Bereaved Consumers Bill of Rights Act, introduced by Rep. Bobby Rush (D-IL) and recently reported favorably out of his subcommittee of the House Energy and Commerce Committee. So this legislation is on the move!

The ICCFA testified before the House Subcommittee on Consumer Protection on January 26 to express our concerns that the misconduct giving rise to the legislation – illegal disinterments, mishandling of human remains, and fraudulent reselling of burial spaces in an Illinois cemetery – were NOT addressed in H.R. 3655. WE were prepared to support such legislation.

Instead, H.R. 3655 requires the Federal Trade Commission to establish a “Funeral Rule II” covering all sellers of funeral goods or services, including nonprofit, religious and municipal entities. Even funeral providers currently under the existing Funeral Rule – i.e., funeral homes - would be saddled with new disclosure requirements under this legislation so nobody gets a free ride. However, we are concerned that some of the state funeral directors associations, and the National Funeral Directors Association, have been lobbying in support of this legislation. Unless we’re missing something, we believe this advocacy in favor of H.R. 3655 by members of our profession is counterproductive and very harmful. Here’s why:

- We have described H.R. 3655 as creating a minefield of relatively minor offenses that are punishable by crushing fines starting at \$16,000 per violation. Under the rules of procedure, the FTC would have relatively little discretion imposing the fines, even on the smallest of funeral homes or cemeteries. Truly, the “dead hand of government” at work.

- More troubling, if this legislation becomes law, it would create something that does not currently exist – a statute section in the U.S. Code that specifically regulates funeral homes, cemeteries, crematories, monument builders, and related businesses. As with other sections of the U.S. Code, this could be amended endlessly by the introduction of new legislation by any of the 535 members of Congress, anytime there is a problem with a local funeral home, cemetery, crematory, monument dealer, etc. in their district. Remember, the FTC Funeral Rule is **not** a federal statute and currently there is **no federal statute** that specifically regulates our profession. H.R. 3655 would change that.

This is why we expected that all the national and state trade associations in the funeral services and cemetery industries would be lined up against H.R. 3655. In fact, as far as we can determine, the ICCFA is the ONLY national trade association that has categorically opposed this bill while other groups either support its enactment or are non-committal.

We are all consumers and everybody is in favor of consumer protection. That said, we are convinced that H.R. 3655 is a bad bill that would make bad law, then open the floodgates to amendments and expansion in the years ahead.

Stop for just a minute and estimate the costs to your business should H.R. 3655 become law and the FTC regulates, or in the case of funeral homes, increases the regulation of your business. Add the risk of astronomical fines and the effect all this will have on your bottom line.

I think you will agree that we must do everything possible to stop H.R. 3655 from becoming law. There are two ways you can help: First, as a state association, please contact the members of your state Congressional delegation **by phone or email** and tell them that a.) H.R. 3655 is a highly controversial bill within our profession; and b.) you believe the legislation if enacted will cause substantial harm to our businesses with little or no commensurate benefit in consumer protection. Second, please urge your members to contact their respective members of Congress by phone or email with the same two points.

The ICCFA position on H.R. 3655 is enclosed for your information. The time to discover that H.R. 3655 is harmful to your business is NOT after it has been enacted into law. Please take action now. Should you have any comments or questions, please feel free to contact ICCFA general counsel Bob Fells at 1-800-645-7700 or by email at rfells@iccfa.com. Thank you.

Enclosure

H.R. 3655, The Bereaved Consumers Bill of Rights Act

ICCFA Speaking Points

1.) H.R. 3655 was introduced in response to a case of major criminal offenses at a Chicago cemetery (Burr Oak). The ICCFA supports the concepts and disclosures contained in Section 3 of H. R. 3655 as good business practices and these reflect the very same standards contained the ICCFA Model Guidelines published over a decade ago. The guidelines can be accessed on the Association's website at www.iccfa.com/government-legal/modelguidelines.

2.) However, the centerpiece of the bill would require the FTC to enact a new trade rule requiring a variety of consumer disclosures by any business selling any type of funeral merchandise or services, including new contract disclosures that would affect funeral homes, which are already covered under the existing FTC Funeral Rule. Typically, under an FTC trade rule, we understand that violations are statutorily imposed at the rate of \$16,000 per violation. Frankly, this amount could bankrupt a number of smaller cemeteries that operate with volunteer staffs and possibly one or two paid employees. All other businesses, including funeral homes, crematories, and monument builders would also risk these substantial penalties for violating H.R. 3655, if enacted.

3.) In its present form, H.R. 3655 the excessive penalties would be imposed for some relatively minor omissions of disclosure in a manner suggesting that the punishment outweighs the offense. In the interest of consumer protection, the ICCFA recommends in the alternative the development of FTC "Funeral Guides" enforced by Section 5 of the FTC Act. The advantage of this approach would allow FTC to track patterns of misconduct by a business as determined by the Guides, rather than imposing fines for isolated, one-event 'gotcha' shortcomings that are sometimes the approach to trade rule enforcement.

4.) The ICCFA is also concerned with the bill's coverage of nonprofit entities including religious organizations that raises both constitutional and jurisdictional issues. For example, the FTC's jurisdiction is generally limited to for-profit businesses although a spokesman for FTC affirmed that the Commission could bring enforcement actions against municipal cemeteries under its current authority.

5.) The ICCFA believes that cemeteries and funeral homes are most efficiently and effectively regulated at the state level. These entities operate locally in their communities and therefore it makes sense to hold them accountable locally. We also note that state authorities in Illinois swiftly investigated the Burr Oak scandal and enacted new legislation. We think it fair to ask what role, if any, the federal government could have or should have played when state and local authorities had the situation well in hand.

In sum, the ICCFA expresses its disappointment that H.R. 3655 did not address the very issues at Burr Oak that prompted the legislation, and expresses its serious concerns that the bill would establish a minefield of new violations for relatively minor offenses, punishable by crushing fines.