

108TH CONGRESS  
2D SESSION

# H. R. 4112

To establish consumer protections, including disclosure requirements, relating to funeral service contracts, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 2004

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

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## A BILL

To establish consumer protections, including disclosure requirements, relating to funeral service contracts, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Federal Death Care  
5       Disclosure Act”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act the following definitions apply:

8               (1) **ALTERNATIVE CONTAINER.**—The term “al-  
9       ternative container” means an unfinished wooden  
10      box or other nonmetal receptacle or enclosure, with-

1 out ornamentation or a fixed interior lining, which  
2 is designed for the encasement of human remains  
3 and which is made of fiberboard, pressed-wood, com-  
4 position materials (with or without an outside cov-  
5 ering), or similar materials.

6 (2) ARRANGEMENT SERVICES FEE.—The term  
7 “arrangement services fee” means a reasonable fee  
8 that—

9 (A) is charged to cover professional and  
10 overhead costs, including staff time dedicated to  
11 conducting arrangement conferences, imple-  
12 menting arrangement instructions, obtaining  
13 permits or other authorizations, preparing no-  
14 tices for newspapers, coordinating with clergy  
15 and monument dealers, and similar activities;  
16 and

17 (B) is—

- 18 (i) calculated at an hourly rate; or  
19 (ii) a series of flat-rate fees for spe-  
20 cific arrangements made by a funeral serv-  
21 ice provider.

22 (3) CASH ADVANCE ITEM.—The term “cash ad-  
23 vance item” means any item of service or merchan-  
24 dise described to a purchaser as a cash advance, ac-  
25 commodation, cash disbursement, or similar term. A

1 cash advance item includes any item obtained from  
2 a third party and paid for by the funeral provider  
3 on the purchaser's behalf. Cash advance items in-  
4 clude cemetery or crematory services, pallbearers,  
5 public transportation, clergy honoraria, flowers, mu-  
6 sicians, singers, nurses, permit fees, obituary no-  
7 tices, gratuities, and death certificates.

8 (4) CASKET.—The term “casket” means a rigid  
9 container which is designed for the encasement of  
10 human remains and which is usually constructed of  
11 wood, metal, fiberglass, plastic, or like material, and  
12 ornamented and lined with fabric.

13 (5) COMMISSION.—The term “Commission”  
14 means the Federal Trade Commission.

15 (6) CREMATION.—The term “cremation” means  
16 a heating process which incinerates human remains.

17 (7) CREMATORY.—The term “crematory”  
18 means any person, partnership, or corporation that  
19 performs cremation.

20 (8) DECEPTIVE PRACTICE.—The term “decep-  
21 tive practice” means an unfair or deceptive act or  
22 practice in or affecting commerce that violates sec-  
23 tion 5(a) of the Federal Trade Commission Act (15  
24 U.S.C. 45(a)).

1           (9) DIRECT CREMATION.—The term “direct  
2       cremation” means a disposition of human remains  
3       by cremation without formal viewing, visitation, or  
4       ceremony with the body present.

5           (10) FUNERAL CEREMONY.—The term “funeral  
6       ceremony” means a service commemorating a de-  
7       ceased person that occurs with the body of the de-  
8       ceased person present.

9           (11) FUNERAL GOODS.—The term “funeral  
10      goods” means goods which are sold or offered for  
11      sale directly to the public for use in connection with  
12      funeral services.

13          (12) FUNERAL PROVIDER.—The term “funeral  
14      provider” means any person, partnership, or cor-  
15      poration that sells or offers to sell funeral goods or  
16      funeral services to the public.

17          (13) FUNERAL SERVICES.—The term “funeral  
18      services” means—

19            (A) any services which may be used to—

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

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

1 (B) services provided by funeral directors,  
2 morticians, cemeterians, cremationists, and me-  
3 morial retailers.

4 (14) IMMEDIATE BURIAL.—The term “imme-  
5 diate burial” means a disposition of human remains  
6 by burial, without formal viewing, visitation, or cere-  
7 mony with the body present, except for a graveside  
8 service.

9 (15) MEMORIAL SERVICE.—The term “memo-  
10 rial service” means a ceremony commemorating the  
11 deceased without the body present.

12 (16) MEMORIAL RETAILER.—The term “memo-  
13 rial retailer” means a person who sells or offers to  
14 sell to the public any memorial intended to mark the  
15 location of the internment of human remains.

16 (17) OUTER BURIAL CONTAINER.—The term  
17 “outer burial container” means any container which  
18 is designed for placement in the grave around the  
19 casket including, but not limited to, containers com-  
20 monly known as burial vaults, grave boxes, and  
21 grave liners.

22 (18) PRENEED CONTRACT.—The term “preneed  
23 contract” means a funeral contract arranged for and  
24 paid, in part or in full, prior to an anticipated death.

1           (19) PURCHASER OF FUNERAL GOODS OR FU-  
 2           NERAL SERVICES.—The terms “purchaser of funeral  
 3           goods or funeral services” and “purchaser” mean  
 4           any person who—

5                   (A) purchases funeral goods or funeral  
 6                   services from a funeral provider; or

7                   (B) contacts a funeral provider, in any  
 8                   manner, including in person, by telephone, by  
 9                   mail, or electronically, to obtain information re-  
 10                  lated to purchasing funeral goods or funeral  
 11                  services.

12           (20) REQUEST FOR INFORMATION RELATED TO  
 13           FUNERAL GOODS OR FUNERAL SERVICES.—The term  
 14           “request for information related to funeral goods or  
 15           funeral services” means any inquiry made by a per-  
 16           son to a funeral provider for information related to  
 17           such goods or services. Such request may be made  
 18           in person, in writing, by telephone, or electronically.

19 **SEC. 3. PRICE DISCLOSURES.**

20           (a) DECEPTIVE PRACTICES.—It shall be a deceptive  
 21           trade practice under section 5(a) of the Federal Trade  
 22           Commission Act (15 U.S.C. 45(a)) for a funeral provider  
 23           to fail to provide, in a timely manner—

24                   (1) in response to a request for information re-  
 25                   lated to funeral goods or funeral services—

1 (A) accurate, printed information regard-  
 2 ing the price of the funeral goods and funeral  
 3 services described in subsection (b); and

4 (B) the printed disclosures described in  
 5 subsection (c); or

6 (2) in response to a specific request for the  
 7 prices of caskets, alternative containers, or outer  
 8 burial containers, a list of the prices of each model  
 9 of casket, alternative container, or outer burial con-  
 10 tainer that the funeral provider offers for sale.

11 (b) FUNERAL GOODS AND FUNERAL SERVICES.—

12 The price of funeral goods and funeral services referred  
 13 to in subsection (a)(1)(A) means the retail price, ex-  
 14 pressed as a flat fee or a price per hour, mile, or other  
 15 unit, of all funeral goods and services offered by a funeral  
 16 provider, including the following:

17 (1) Embalming.

18 (2) Transportation of remains.

19 (3) The use of facilities.

20 (4) Staff attendance at meetings, gatherings, or  
 21 services.

22 (5) Equipment usage or rental.

23 (6) Casket and alternative containers.

24 (7) Outer burial container.

25 (8) Immediate burials.

1 (9) Direct cremations.

2 (10) Crematory services.

3 (11) Viewing, without embalming.

4 (12) Insurance or benefit processing fee.

5 (13) Internment rights.

6 (14) Opening and closing charges.

7 (15) Monuments, markers, or memorials.

8 (c) DISCLOSURES.—The disclosures referred to in  
9 subsection (a)(1)(B) are the following disclosures:

10 (1) The name, address, and telephone number  
11 of the funeral provider’s place of business.

12 (2) The effective date of any prices provided.

13 (3) The following statement: “For information  
14 on the purchase of funerals and consumer rights or  
15 to file a complaint, you may contact  
16 \_\_\_\_\_.”, with the blank space being filled  
17 with the name, address, phone number, and other  
18 relevant information for contacting the State agency  
19 or agencies responsible for handling consumer in-  
20 quiries and complaints pertaining to death care serv-  
21 ice providers.

22 (4) Contact information, including a toll-free  
23 number, for an agency that provides information re-  
24 lated to veteran’s benefits.



1           (5) In immediate conjunction with the price of  
2           embalming, the following statements:

3                   (A) “Except in certain special cases, em-  
4                   balming is not required by law. Embalming may  
5                   be necessary, however, if you select certain fu-  
6                   neral arrangements, such as a funeral with  
7                   viewing. If you do not want embalming, you  
8                   usually have the right to choose an arrange-  
9                   ment that does not require you to pay for it,  
10                  such as direct cremation, immediate burial, or  
11                  other timely disposition.”. The phrase “except  
12                  in certain special cases” shall not be included in  
13                  the disclosure if State or local law in the area  
14                  where the provider does business does not re-  
15                  quire embalming under any circumstances.

16                  (B) “If you selected a funeral that may re-  
17                  quire embalming, such as a funeral with view-  
18                  ing, you may have to pay for embalming. You  
19                  do not have to pay for embalming you did not  
20                  approve if you selected arrangements such as a  
21                  direct cremation or immediate burial. If we  
22                  charged for embalming, we will explain why  
23                  below.”.

24           (6) In immediate conjunction with the price of  
25           direct cremations, the following disclosure: “If you

1 want to arrange a direct cremation, you can use an  
2 alternative container. Alternative containers encase  
3 the body and can be made of materials like fiber-  
4 board or composition materials (with or without an  
5 outside covering). The containers we provide are  
6 \_\_\_\_\_.”, with the blank space being filled  
7 with a description of the container and its construc-  
8 tion.

9 (7) In immediate conjunction with the price of  
10 any outer burial container, the following disclosure:  
11 “In most areas of the country, State or local law  
12 does not require that you buy a container to sur-  
13 round the casket in the grave. However, many ceme-  
14 teries require that you have such a container so that  
15 the grave will not sink or settle. Either a grave liner  
16 or a burial vault will satisfy these requirements.”.  
17 The phrase “in most areas of the country” shall not  
18 be included in this disclosure if State or local law in  
19 the area where the provider does business does not  
20 require a container to surround the casket in the  
21 grave.

22 (8) In immediate conjunction with the price of  
23 any casket or sealer casket, the following disclosure:  
24 “There is no scientific or other evidence that any

1 casket with a sealing device will preserve human re-  
2 mains.”

3 (d) **TIMELY MANNER.**—For the purposes of sub-  
4 section (a), information is provided in a timely manner  
5 if it is provided to the purchaser of funeral goods or fu-  
6 neral services at the first opportunity, which may not be  
7 later than the first selling, showing, or making any rep-  
8 resentation about any funeral goods or funeral services.

9 (e) **SPECIFIC APPLICATION.**—The requirements of  
10 subsection (a) apply to every communication between a fu-  
11 neral provider and a purchaser of funeral goods or funeral  
12 services, except an in-person request made by a funeral  
13 provider for authorization to embalm at the time a de-  
14 ceased human body is removed for transportation.

15 **SEC. 4. STATEMENT OF FUNERAL GOODS AND SERVICES**  
16 **SELECTED.**

17 (a) **IN GENERAL.**—It shall be a deceptive trade prac-  
18 tice under section 5(a) of the Federal Trade Commission  
19 Act (15 U.S.C. 45(a)) for a funeral provider to fail to give  
20 an itemized written statement for retention to a purchaser  
21 of funeral goods or funeral services at the conclusion of  
22 the discussion related to such goods and services and prior  
23 to providing any services beyond taking possession of a  
24 deceased human body for authorized embalming. The  
25 statement shall include the following information:

1           (1) The funeral goods and funeral services se-  
2       lected by the purchaser and the prices to be paid for  
3       each good or service.

4           (2) A specific itemization of cash advance items  
5       to the extent then known or reasonably ascertain-  
6       able. If the prices are not known or reasonably as-  
7       certainable, a good faith estimate shall be given and  
8       a written statement that the actual charges shall be  
9       provided before the final bill is paid.

10          (3) The total cost of the goods and services se-  
11       lected.

12          (4) If a sealer casket is selected by the pur-  
13       chaser, the following disclosure: “This product is not  
14       designed or intended to preserve human remains,  
15       and may under certain circumstances accelerate the  
16       decomposition of the body.”

17       (b) PLACEMENT OF INFORMATION.—The information  
18       required by subsection (a) shall be included on any con-  
19       tract, statement, or other document which the funeral pro-  
20       vider would otherwise provide at the conclusion of a dis-  
21       cussion related to funeral goods or funeral services.

22       **SEC. 5. MISREPRESENTATIONS.**

23       It shall be a deceptive trade practice under section  
24       5(a) of the Federal Trade Commission Act (15 U.S.C.  
25       45(a)) for a funeral provider to—

1           (1) inaccurately represent that Federal, State,  
2           or local law or industry custom requires the pur-  
3           chase of any funeral goods or funeral services, in-  
4           cluding to inaccurately represent that—

5                   (A) State or local law requires that a de-  
6                   ceased person be embalmed;

7                   (B) State or local law requires a casket for  
8                   direct cremation; or

9                   (C) a particular cemetery requires outer  
10                  burial containers;

11           (2) fail to identify and briefly describe in writ-  
12           ing on the statement of funeral goods and funeral  
13           services selected any legal requirement which the fu-  
14           neral provider represents to a person as compelling  
15           the purchase of funeral goods or funeral services for  
16           the funeral which that person is arranging;

17           (3) fail to disclose that embalming is not re-  
18           quired for—

19                   (A) direct cremation;

20                   (B) immediate burial; or

21                   (C) a closed casket funeral without viewing  
22                   or visitation when refrigeration is available and  
23                   when State or local law does not require em-  
24                   balming; or

1           (4) inaccurately represent the ability of funeral  
2       goods or funeral services to delay the natural decom-  
3       position of human remains for a long-term or indefi-  
4       nite time.

5   **SEC. 6. REQUIRED PURCHASE OF FUNERAL GOODS OR FU-**  
6                   **NERAL SERVICES.**

7       (a) OTHER REQUIRED PURCHASES OF FUNERAL  
8       GOODS OR FUNERAL SERVICES.—It shall be a deceptive  
9       trade practice under section 5(a) of the Federal Trade  
10      Commission Act (15 U.S.C. 45(a)) for a funeral provider  
11      to—

12           (1) condition the furnishing of any funeral good  
13      or funeral service to a person arranging a funeral on  
14      the purchase of any other funeral good or funeral  
15      service, except as required by law or as otherwise  
16      permitted by this Act;

17           (2) charge any fee as a condition to furnishing  
18      any funeral goods or funeral services to a person ar-  
19      ranging a funeral, other than—

20           (A) the fees for specific funeral services  
21      and funeral goods selected by the purchaser;

22           (B) the fees for other funeral goods or fu-  
23      neral services required to be purchased, as ex-  
24      plained on the itemized statement in accordance  
25      with section 4(a); or

1 (C) an arrangement services fee that—

2 (i) is disclosed as being either an  
3 hourly rate fee described in clause (i) of  
4 section 2(2)(B) or a flat fee described in  
5 clause (ii) of such section; and

6 (ii) is elected by the purchaser;

7 (3) fail to place—

8 (A) immediately above the prices disclosed  
9 as described in section 3(a), the following dis-  
10 closure: “The goods and services shown below  
11 are those we can provide to our customers. You  
12 may choose the items you desire. If legal or  
13 other requirements mean you must buy any  
14 item that you do not specifically request, we will  
15 explain the reason in writing on the statement  
16 we provide describing the funeral goods and  
17 services you selected.”; or

18 (B) in the statement of funeral goods and  
19 services selected, as described in section  
20 4(a)(1), the following disclosure: “Charges are  
21 only for those items that you selected or that  
22 are required. If we are required by law or by a  
23 cemetery or crematory to use any items, we will  
24 explain the reasons in writing below.”.

1 (b) EXCEPTION.—A funeral provider shall not be  
2 treated as violating this section, if the funeral provider  
3 fails to comply with a request for a combination of goods  
4 or services which would be impossible, impractical, or ex-  
5 cessively burdensome to provide.

6 **SEC. 7. SERVICES PROVIDED WITHOUT PRIOR APPROVAL.**

7 (a) DECEPTIVE PRACTICES.—It shall be a deceptive  
8 trade practice under section 5(a) of the Federal Trade  
9 Commission Act (15 U.S.C. 45(a)) for a funeral provider  
10 to embalm a deceased human body unless—

11 (1) State or local law or regulation requires em-  
12 balming in the particular circumstances regardless  
13 of any funeral choice which the family might make;

14 (2) prior approval for embalming has been ex-  
15 pressly obtained from a family member or other au-  
16 thorized person;

17 (3) the funeral provider is unable to contact the  
18 family member or other authorized person after ex-  
19 ercising due diligence and reasonably believes the  
20 family wants embalming performed; or

21 (4) refrigeration is necessary and is not avail-  
22 able in the community where the provider does busi-  
23 ness.

24 (b) DISCLOSURE REQUIRED.—In seeking the ap-  
25 proval required by subsection (a)(2), the funeral provider



1 shall disclose that a fee will be charged if the family or  
2 other authorized person selects a funeral which requires  
3 embalming, such as a funeral with a public or private  
4 viewing, and that no fee will be charged if the family or  
5 other authorized person selects a service which does not  
6 require embalming, such as direct cremation or immediate  
7 burial.

8 **SEC. 8. RETENTION OF DOCUMENTS.**

9 A funeral provider shall retain and make available for  
10 inspection by the Commission true and accurate copies  
11 of—

12 (1) the price lists required by section 3(a) for  
13 at least 1 year after the date of the last distribution  
14 of such lists to customers; and

15 (2) each statement of funeral goods and serv-  
16 ices selected, as required by section 4, for at least  
17 1 year from the date of arranging a funeral or me-  
18 morial services.

19 **SEC. 9. COMPREHENSION OF DISCLOSURES.**

20 A funeral provider shall make the disclosures re-  
21 quired by this Act in a clear and conspicuous manner  
22 using type that is not smaller than 12 points in size. A  
23 funeral provider shall not include in any price list, a state-  
24 ment or information that alters or contradicts the infor-  
25 mation required by this Act to be included in those lists.

1 **SEC. 10. PROHIBITED SALES PRACTICES.**

2 (a) IN GENERAL.—Each of the following sales prac-  
3 tices shall be a deceptive trade practice under section 5(a)  
4 of the Federal Trade Commission Act (15 U.S.C. 45(a)):

5 (1) Unsolicited telephone offers to sell funeral  
6 goods, funeral services, crematory services, inter-  
7 ment rights, or other cemetery and memorialization  
8 goods and services.

9 (2) Door-to-door direct offers to sell funeral  
10 goods, funeral services, crematory services, inter-  
11 ment rights, or other cemetery and memorialization  
12 goods and services.

13 (b) IDENTIFICATION OF AFFILIATION.—A person  
14 who is an operator, funeral provider, funeral director, em-  
15 balmer, or memorial dealer shall—

16 (1) state the person’s affiliation with any pub-  
17 licly traded company in all contracts and on all busi-  
18 ness letterhead, advertising, and marketing mate-  
19 rials; and

20 (2) state the person’s licensed business location  
21 in all directories, advertising, and marketing mate-  
22 rials in which offsite telephone numbers are used.

23 **SEC. 11. CASH ADVANCE PROVISIONS.**

24 It shall be a deceptive trade practice under section  
25 5(a) of the Federal Trade Commission Act (15 U.S.C.  
26 45(a)) for a funeral provider to—

1 (1) represent that the price charged for a cash  
 2 advance item is the same as the cost to the funeral  
 3 provider for the item when such is not the case;

4 (2) fail to disclose to a person arranging a fu-  
 5 neral that the price being charged for a cash ad-  
 6 vance item is not the same as the cost to the funeral  
 7 provider for the item when such is the case; or

8 (3) fail to place in the itemized statement of fu-  
 9 neral goods and funeral services selected, in imme-  
 10 diate conjunction with the list of itemized cash ad-  
 11 vance items required by section 4(a)(2), the fol-  
 12 lowing statements:

13 (A) “We charge for our services in obtain-  
 14 ing \_\_\_\_\_.”, with the blank space being  
 15 filled with a list of cash advance items, if the  
 16 funeral provider marks up the price for or re-  
 17 ceives and retains a rebate, commission, or  
 18 trade or volume discount on a cash advance  
 19 item.

20 (B) “You have the right to arrange for the  
 21 purchase of these items on your own behalf.”.

22 **SEC. 12. CONSUMER PROTECTIONS IN PRENEED AND PRE-**  
 23 **PAID FUNERAL SERVICE TRANSACTIONS.**

24 It shall be a deceptive trade practice under section  
 25 5(a) of the Federal Trade Commission Act (15 U.S.C.

1 45(a)) for a funeral provider to fail to comply with the  
2 following prepaid contract requirements:

3 (1) Prepaid contracts shall conform to all appli-  
4 cable Federal and State statutes and regulations.

5 (2) Prepaid contracts shall be written in plain  
6 English, and clearly state the merchandise and serv-  
7 ices that purchasers are buying and their prices. Use  
8 of legal or industry-specific jargon shall be avoided  
9 to the extent possible.

10 (3) Charges for funeral goods or funeral serv-  
11 ices shall be itemized. The itemization shall be in  
12 greater detail than a recitation of prices and shall  
13 include a complete description of the services to be  
14 rendered and an unambiguous description of the  
15 merchandise to be delivered.

16 (4) When prices of merchandise or services to  
17 be delivered in the future are not guaranteed, or an  
18 additional payment may be required in the future, a  
19 statement to that effect shall be included in the pre-  
20 pared contract and initialed by the purchaser.

21 (5) The contract must clearly state what hap-  
22 pens if merchandise is not available at delivery time  
23 and substitution is necessary. The description of the  
24 merchandise shall be sufficiently complete for the  
25 person authorized to make funeral arrangements to

1 make a decision, based on objective criteria, about  
2 the comparability of a needed substitution.

3 (6) No substitution shall be made without the  
4 consent of the purchaser, or upon the purchaser's  
5 death, the person authorized to make funeral ar-  
6 rangements. A prepaid contract must contain a pro-  
7 vision, which is initialed by the purchaser, either  
8 prohibiting any changes, or, alternatively, specifying  
9 what instructions may be modified and by whom.

10 (7) There shall be an explanation of how the  
11 purchaser's funds will be protected to assure the  
12 seller's performance in compliance with the pre-  
13 vailing prepaid contract law. The name of the insti-  
14 tution where funds will be deposited in escrow must  
15 be disclosed. The buyer must receive an annual re-  
16 port from the escrow agent. An administrative fee,  
17 not to exceed 1 percent of the contract, may be with-  
18 drawn annually by the escrow agent.

19 (8) The prepaid contract shall provide for can-  
20 cellation and refund or transfer of the contract with  
21 no loss of benefits paid by the purchaser along with  
22 accrued interest.

23 (9) A prepaid contract may be made irrevocable  
24 only when the beneficiary will be applying for med-  
25 icaid or other social benefits within the next 6

1 months. The irrevocability of the prepaid contract  
2 shall not affect the right of the purchaser to change  
3 the provider.

4 (10) Copies of the prepaid contract and supple-  
5 mental material, such as information on credit life  
6 insurance and transfer or exchange plans, shall be  
7 provided to the purchaser at the time of the preneed  
8 sale.

9 (11) Copies of the prepaid contract and at-need  
10 documentation shall be provided to the person au-  
11 thorized to make the final funeral arrangements at  
12 the time of death to ensure that the merchandise  
13 and services match those specified in the prepaid  
14 contract. A list of items substituted shall be in writ-  
15 ing and included in the at-need documentation.

16 (12) Copies of all prepaid contracts and at-need  
17 documentation shall be retained by the seller for a  
18 period of 1 year after performance of the contract.

19 **SEC. 13. CONSUMER DISCLOSURES IN PREPAID CON-**  
20 **TRACTS.**

21 Not later than 1 year after the date of enactment  
22 of this Act, the Commission shall establish minimum  
23 standards and requirements with respect to State man-  
24 dated consumer disclosures in prepaid contracts for the

1 purchase of funeral, cemetery, or crematory goods or serv-  
2 ices, including—

3 (1) basic information identifying the seller, the  
4 purchaser, the entity that will provide the goods and  
5 services (if different from the seller), the prices of  
6 the goods and services being purchased on an  
7 itemized basis, and the total price of the purchase;

8 (2) funding information disclosing where, how,  
9 and with whom the prepaid funds will be deposited  
10 and invested, and what portion of the prepaid funds,  
11 if any, will be paid to the seller prior to the perform-  
12 ance of the contract;

13 (3) price and payment disclosures regarding to  
14 what extent the prices of the goods and services are  
15 guaranteed or not guaranteed, who is responsible for  
16 any payment shortfalls, and who is entitled to re-  
17 ceive excess funds; and

18 (4) cancellation and transfer information dis-  
19 closing whether the consumer may cancel or transfer  
20 the prepaid contract, the method for exercising such  
21 rights, the amount of revocation or transfer fees, if  
22 any, retained by the seller, and safeguards for the  
23 consumer if the seller is unable to provide the goods  
24 and services in the contract.

1   **SEC. 14. PRIVATE RIGHT OF ACTION.**

2           In addition to the remedies identified in the Federal  
3   Trade Commission Act (15 U.S.C. 41 et seq.), a person  
4   who is injured by a violation of this Act may commence  
5   a civil action against the funeral provider. Such person  
6   shall be entitled to recover the greater of actual damages  
7   or \$5,000 for each violation proved by a preponderance  
8   of the evidence.

9   **SEC. 15. ENFORCEMENT BY THE COMMISSION.**

10          The Commission shall enforce the provisions of this  
11   Act in the same manner, by the same means, and with  
12   the same jurisdiction, powers, and duties as though all ap-  
13   plicable terms and provisions of the Federal Trade Com-  
14   mission Act (15 U.S.C. 41 et seq.) were incorporated into  
15   and made a part of this Act.

16   **SEC. 16. ADMINISTRATION AND RULEMAKING.**

17          (a) ADMINISTRATION.—The provisions of this Act  
18   shall be administered by the Commission.

19          (b) RULEMAKING.—Notwithstanding any other provi-  
20   sion of law, the Commission may prescribe rules in accord-  
21   ance with section 553 of title 5, United States Code (com-  
22   monly known as the “Administrative Procedure Act”) to  
23   carry out the provisions of this Act.



1 **SEC. 17. STATE EXEMPTIONS.**

2 A provision of this Act, or a regulation issued by the  
3 Commission pursuant to this Act, shall not be in effect  
4 in a State if—

5 (1) the appropriate State agency requests such  
6 provision or regulation not be in effect in the State;

7 (2) there is a State requirement in effect that  
8 applies to a transaction to which the provision or  
9 regulation applies;

10 (3) the State requirement affords an overall  
11 level of protection to consumers that is equal to, or  
12 exceeds, the level of protection afforded by the provi-  
13 sion or regulation; and

14 (4) the Commission determines that the State  
15 is administering and enforcing the State require-  
16 ment in a manner that affords a level of protection  
17 to consumers that is equal to or exceeds the level of  
18 protection afforded by the Commission's enforce-  
19 ment of such provisions or regulations.

20 **SEC. 18. DECLARATION OF INTENT.**

21 This Act does not apply to the business, or acts in  
22 the conduct of the business, of insurance.

1 **SEC. 19. AUTHORIZATION OF APPROPRIATIONS.**

2       There are authorized to be appropriated to the Fed-  
3 eral Trade Commission \$5,000,000 for each of fiscal years  
4 2005 through 2010 to carry out this Act.

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