

1999 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB133)

Received: **06/19/99**

Received By: **kunkemd**

Wanted: **Soon**

Identical to LRB:

For: **Assembly Republican Caucus**

By/Representing: **Miller**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Occupational Reg. - cem reg
Trade Regulation**

Extra Copies:

Pre Topic:

ARC:.....Miller - Am. #35.

Topic:

Consumer disclosures for funeral goods and services

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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ARC

To Be Drafted

Agency

Amendment#

ARC Analyst

LRB#

Tax Cut

Summary

Current law requires all funeral directors that sell or offer to sell funeral goods and services to the public to give consumers accurate, itemized price information and various other disclosures about funeral goods and services. Recently, several unlicensed individuals working for casket stores, funeral service centers, cemeteries and monument sellers have been selling similar merchandise with little oversight. Funeral directors are prohibited from charging an additional fee or surcharge to consumers who purchase a casket or other merchandise elsewhere.

This amendment requires anyone selling caskets, outer burial containers or cemetery merchandise to make the same consumer disclosures that licensed funeral directors must make when selling these products.

Fiscal Impact

Initial indications from the Legislative Fiscal Bureau are this amendment may have a slight administrative fiscal impact upon the Department of Regulation and Licensing. A firmer fiscal estimate is forthcoming from the Fiscal Bureau.

Statement of Intent

Department of Regulation and Licensing. Requires anyone selling caskets, outer burial containers or cemetery merchandise to make the same consumer disclosures that licensed funeral directors must make when selling these products.

COMPLYING WITH THE FUNERAL RULE

The General Price List

The Casket Price List

The Funeral Home's Financial

Statement of Funeral Goods

and Services

Additional Price Lists

1985

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Introduction

These guidelines are intended to help you, the funeral provider, comply with the Federal Trade Commission (FTC or Commission) Funeral Rule. The Funeral Rule went into effect on April 30, 1984. The Commission has revised the Rule, and these revisions will become effective July 19, 1994.

The Funeral Rule requires you to give consumers accurate, itemized price information and various other disclosures about funeral goods and services. In addition, the Rule prohibits you from:

- misrepresenting legal, crematory, and cemetery requirements;
- embalming for a fee without permission;
- requiring the purchase of a casket for direct cremation;
- requiring consumers to buy certain funeral goods or services as a condition for furnishing other funeral goods or services; and
- engaging in other deceptive or unfair practices.

If you violate the Funeral Rule, you may be subject to penalties of up to \$10,000 per violation.

These guidelines do not amend or modify the Rule. They explain the requirements of the revised Funeral Rule and discuss how to prepare documents required by the Rule — the General Price List, the Casket Price List, the Outer Burial Container Price List, and the Statement of Funeral Goods and Services Selected. The guidelines also include sample price lists and a sample itemized statement form. These guidelines represent the FTC staff's view of what the law requires. They are not binding on the Commission.

Who Must Comply With the Funeral Rule?

→ SHOULD NOW INCLUDE SELLERS OF
CEMETERY MERCHANDISE, CASKETS
AND OUTER BURIAL CONTAINERS

All "funeral providers" must comply with the Rule. You are a funeral provider if you sell or offer to sell both funeral goods and funeral services to the public.

Funeral goods are all products sold directly to the public in connection with funeral services.

Funeral services are:

- services used to care for and prepare bodies for burial, cremation, or other final disposition; and
- services used to arrange, supervise, or conduct the funeral ceremony or final disposition of human remains.

You are a funeral provider if you sell or offer to sell funeral goods and both types of funeral services. You do not have to be a licensed funeral director and your business does not have to be a licensed funeral home to be covered by the Funeral Rule. Cemeteries, crematories, and other businesses can also be "funeral providers" if they market both funeral goods and services.

You must comply with the Rule even if a particular consumer buys only goods or only funeral services, but not both. If you offer to sell both goods and services, you must comply with the Rule for every customer. However, you are not covered by the Rule if you sell only funeral goods, such as caskets, but not services relating to the disposition of remains.

You are covered by the Rule even if you organize your business to sell goods through one company and services through another. If you are a funeral provider, you cannot avoid being covered by the Rule by restructuring your business.

Does the Rule Apply to Pre-Need Arrangements?

The Rule's requirements, as described on the following pages, apply to both pre-need and at-need funeral arrangements.

In pre-need situations, you must comply with all Rule requirements at the time funeral arrangements are pre-planned. You also need to comply with the Rule after the death of the individual who made pre-need arrangements. If the survivors inquire about goods or services, alter the pre-planned arrangements, or are required to pay additional sums of money, you must give them all relevant disclosures and price lists. For example, survivors may be asked to pay additional amounts if the pre-paid plan does not guarantee prices at the time of death. In other cases, survivors may change arrangements specified in the pre-need plan, adding or subtracting certain goods or services. In both situations, the requirements of the Rule apply. You must give the survivors relevant price lists, as well as an itemized Statement of Funeral Goods and Services Selected (see page 8).

You also must comply with the Rule if you sell pre-need contracts on behalf of one or more funeral homes, but do not yourself provide funeral goods and services. In such a case, even though you don't provide the funeral items, you are an agent of a funeral provider and therefore are covered by the Rule.

The Rule does not apply to pre-need contracts entered into before the Rule went into effect in 1984. However, if a pre-need contract signed before 1984 is modified after 1984, the modification triggers all of the Rule's requirements.

Example: Mr. Green made pre-need arrangements in 1980; he dies in 1994. At the time of his death, his wife wants to change the casket specified in the pre-need contract and to add visitation hours. Because Mrs. Green is changing the contract after 1984, the funeral provider must comply with all of the Rule's requirements, including giving Mrs. Green a General Price List, showing her a Casket Price List, and providing her with an itemized Statement of Goods and Services Selected.

Note: In a situation like the above example, you should check your state law to determine whether it allows you to alter the terms of such a contract.



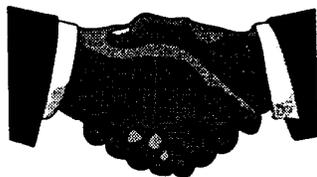
The General Price List

The General Price List (GPL) is the keystone of the Funeral Rule. It must contain identifying information (see page 9), itemized prices for the various goods and services that you sell (see pages 13-17), and other important disclosures (see pages 9-12). The GPL enables consumers to comparison shop and to purchase, on an itemized basis, only the goods and services they want.

Who Gets a GPL?

You must give the General Price List to anyone who asks, in person, about funeral goods, funeral services, or the prices of such goods or services. You must give the GPL to such individuals to keep. The request for information does not have to come from a consumer or someone who wants to make funeral arrangements now or in the future. You must give a GPL to all persons who inquire about funeral arrangements. This may include competitors, journalists, and representatives of businesses, religious societies, government agencies, or consumer groups.

Note: If someone asks you about the goods and services that you sell, you must give that person a General Price List. If you are uncertain whether the Rule applies in a particular situation, it would be sensible to provide the list.



When Should the GPL Be Offered?

You do not have to hand out the General Price List as soon as someone walks into your business. But, you must offer the price list when you begin to discuss any of the following:

- the type of funeral or disposition that you can arrange;
- the specific goods and services that you offer; or
- the prices of your goods and services.

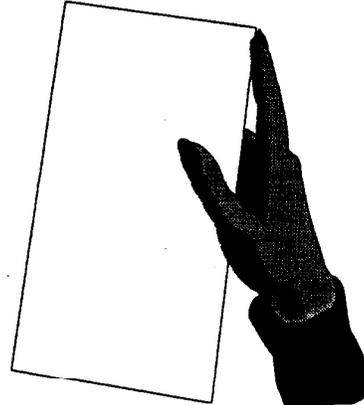
Before giving a GPL to a bereaved individual, you may offer your condolences and discuss preliminary matters like veteran's benefits or death certificates.

The triggering event for giving out the GPL is a face-to-face meeting. The face-to-face meeting can occur anywhere, not just at the funeral home. For example, you must give out a General Price List even if the discussion of prices or arrangements takes place in the family's home or while removing the deceased from a hospital or a nursing home. You should tell your employees to carry extra price lists with them.

Exception: You are not required to offer a General Price List if you remove the deceased for transportation to the funeral home and, at that time, only request the authorization to embalm. When you request authorization to embalm, however, you also must:

Disclose that embalming is not required by law (except in special cases, if relevant); and

Refrain from further discussion about prices or the selection of funeral goods or services while you remove the deceased. Any further discussion of prices or the selection of goods or services at this time would trigger the requirement to provide a GPL.



What About Phone or Mail Inquiries?

You must give certain information to people who telephone (see page 26), but the Rule does not require you to send callers a General Price List. Similarly, you do not have to send a GPL in response to mail inquiries about funeral goods and services. Of course, you certainly are free to send a GPL to someone who calls or writes for information if you wish to do so. However, if a telephone or mail inquiry is followed up by a meeting at the funeral home or elsewhere, you must provide a GPL at that time.

Note: Some states require funeral providers to mail a price list upon request. You should check to see what the requirements are in your state.

Does the Rule Require the GPL Be Given to Keep?

A verbal offer of a GPL is not enough to comply with the Rule. You cannot merely tell consumers that a GPL is available for inspection. You also cannot show them a GPL in a booklet or binder where it appears that there is only one copy available or that the booklet is solely for the funeral director's use. You must physically offer consumers a General Price List that they can keep and take home with them. If the consumer does not want to accept or look at the General Price List, you do not have to do anything else. However, you should do nothing to discourage customers from looking at the GPL, such as telling them that it is unnecessary or difficult to understand.

Note: You cannot charge a fee for the price list or place any conditions upon giving consumers information that the Rule requires you to give to them. You must give all required information to anyone who asks, free of charge.



What About the GPL and Pre-need Arrangements?

You must give out a General Price List in all pre-need situations. Because you may sell different goods and services on a pre-need basis, your pre-need GPL may vary from the GPL you use in at-need situations. However, any General Price List that you use for pre-need arrangements must include all required disclosures (see pages 9-12) and offer goods and services on an itemized basis (see pages 13-17). You cannot offer only package funerals to pre-need customers.

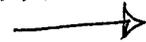
In addition, as stated above (see page 4), you must give a GPL to anyone who wishes to modify the funeral goods or services already purchased under a pre-need contract or to a survivor who must pay an additional sum because prices have increased since the time the arrangements were pre-planned.

Example: Mr. Stone made pre-need arrangements before his death. His wife wants to change the casket and the services that he bought under the pre-need contract. You must give Mrs. Stone a General Price List at the beginning of the discussions and show her a Casket Price List before she looks at any caskets.



note:

some cemeteries
etc. may not sell
all five of these
items. If they don't
sell the item then
it doesn't apply
to that item.



Information Required on the GPL

Identifying Information

The General Price List should be printed or typewritten, and must contain the following identifying information:

- the name, address, and telephone number of the funeral provider's place of business, including (where relevant) the address and telephone number for each branch;
- the caption: "General Price List;" and
- the effective date of the price list.

Required Disclosures on the GPL

The Rule also requires you to make six disclosures on your General Price List.⁽¹⁾ These disclosures discuss:

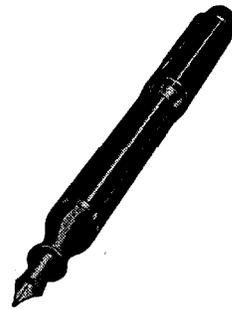
1. The consumer's right to select only the goods and services desired;
2. Embalming; *→ only applies to funeral providers*
3. Alternative containers for direct cremation;
4. The basic services fee;
5. The Casket Price List; and
6. The Outer Burial Container Price List.

Each of these disclosures is discussed in the following sections. You must place these required disclosures on the General Price List exactly as the Rule provides. (See also sample 1 GPL at the end of this publication.) In addition, you must use the **identical wording** given in the Rule. You cannot edit or paraphrase.

Note: You can include additional information, such as a reference to your own state laws. But, you cannot change the FTC language or add anything that will modify the FTC language.

1. Right of Selection

The first disclosure informs consumers that they have a right to select only the items they want to buy, besides a non-declinable basic services fee (see pages 15-16 for a detailed description of this fee).⁽²⁾ You should place this statement immediately above the prices of the goods and services that you offer. The statement should read as follows:



The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. **However, any funeral arrangements you select will include a charge for our basic services and overhead.** If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.

You must include the third sentence of the disclosure, indicated in bold-face above, if customers cannot decline the basic services fee. You may add the phrase "and overhead" after the word "services," as shown above, if the fee includes the recovery of overhead costs.

2. Embalming

The second disclosure tells consumers that the law does not require embalming.⁽³⁾ The statement should read as follows:

Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial.

You do not need to include the phrase, "except in certain special cases," indicated in bold-face above, if state or local law in the area where you do business does not require embalming under any circumstances. If you want to add information about state law requirements, you can do so after the FTC disclosure. You should place this disclosure in immediate conjunction with the price for embalming.

Note: "In immediate conjunction" means that the embalming disclosure must appear directly next to the price for embalming. You should not put the disclosure on a separate page or anywhere else on the GPL apart from the embalming price. (See also Sample 1 GPL at the end of this publication.)

3. Alternative Containers

The third disclosure informs consumers that they may use alternative containers (see the revised Rule for a full definition of this term) for direct cremations.⁽⁴⁾ This disclosure must read as follows:

If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (*specify containers*).

You should place this disclosure in immediate conjunction with (directly next to) the price range for direct cremation. At the end of the last sentence, you should describe the specific kind of container(s) that you offer. If you don't arrange direct cremations, you don't need to include this disclosure on the GPL.

4. Basic Services Fee

The fourth disclosure tells consumers about any "basic services fee" (the fee for the professional services of the funeral director and staff) that you will add to the total cost of the funeral arrangements.⁽⁵⁾ This basic services fee could include a charge for the services you perform in conducting the arrangements conference, planning the funeral, securing the necessary permits, preparing the notices, and coordinating the cemetery or crematory arrangements. This fee also may include overhead that you have not allocated elsewhere. You can include this fee on your General Price List in one of two ways:

Option 1: If you list a separate basic services fee and the charge is non-declinable (the consumer does not have the option of declining the charge), you must provide the following disclosure:

This fee for our basic services and overhead will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)

If you decide on Option 1, this disclosure must appear together with the price for the basic services and with a description of the services you include for that price. (You cannot place this disclosure on a separate page or anywhere else on the GPL apart from the basic services price.) If this basic services fee is non-declinable, the price also must include all charges for the recovery of overhead that you have not allocated elsewhere. In this situation, the first sentence of your disclosure can include the phrase "and overhead" after the word "services," as shown above.



Option 2: Instead of charging a separate basic services fee, you can include the services fee in your casket prices. With this alternative, you must include the following disclosure:

Please note that a fee of (*specify dollar amount*) for the use of our basic ser-

vices and overhead is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (*specify*).

If you decide on Option 2, the fee should include all charges for the recovery of overhead costs not allocated elsewhere, and you may add the phrase "and overhead" after the word "services" in the first sentence, indicated in bold-face above. The disclosure must appear on the GPL together with the prices for the individual caskets or together with the casket price range if you have a separate Casket Price List.

5. Casket Price List

The fifth disclosure tells consumers that a Casket Price List is available.⁽⁶⁾ You may list casket prices either on the General Price List or on a separate "Casket Price List." If you use a separate Casket Price List, your GPL should state the range of prices for the caskets you sell, together with the following disclosure:

A complete price list will be provided at the funeral home.

6. Outer Burial Container Price List

The sixth disclosure informs consumers that an Outer Burial Container Price List is available.⁽⁷⁾ Again, you can either put the prices for the outer burial containers on your General Price List, or you can provide a separate "Outer Burial Container Price List." If you use a separate price list, your GPL should state the range of prices for the outer burial containers you sell, together with the following disclosure:

A complete price list will be provided at the funeral home.

If you put the prices for the outer burial containers on your General Price List, you also must include the following disclosure in immediate conjunction with (directly next to) the outer burial container prices.

In most areas of the country, state or local law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements.

If instead you provide a separate price list for outer burial containers, then you must include the above disclosure on your Outer Burial Container Price List (see page 21). You don't have to include the phrase, "**in most areas of the country,**" indicated in bold-face above, in the disclosure if your state or local law does not require a container to surround the casket in the grave.

Required Itemized Prices on the GPL

The Rule requires you to itemize the prices for certain goods and services so consumers may choose only those elements of a funeral that they want. You must list the following 16 specified items of goods and services on the GPL, together with the price for each item:⁽⁹⁾

1. Forwarding of remains to another funeral home;
2. Receiving remains from another funeral home;
3. Direct cremation;
4. Immediate burial;
5. Basic services of funeral director and staff, and overhead;
6. Transfer of remains to funeral home;
7. Embalming;
8. Other preparation of the body;
9. Use of facilities and staff for viewing;
10. Use of facilities and staff for funeral ceremony;
11. Use of facilities and staff for memorial service;
12. Use of equipment and staff for graveside service;
13. Hearse;
14. Limousine;
15. Either individual casket prices or the range of casket prices that appear on the Casket Price List; and

16. Either individual outer burial container prices or the range of outer burial container prices that appear on the Outer Burial Container Price List.

You can list these items in any order you want. You only have to list the items that you actually offer. If you do not offer one or more of the 16 items, you need not list those items on the General Price List.

In addition to these 16 items, you also may list other items that you offer, such as acknowledgement cards and cremation urns. You also may provide prices for package funerals on your GPL. However, you must offer any package funerals in addition to and not in place of the required itemized prices.⁽⁹⁾

The itemized prices on your General Price List, as well as your Casket Price List and Outer Burial Container Price List, should be accurate and up-to-date. These prices should reflect the prices that you actually charge your customers.

Of course, you can offer a discount when there are special circumstances, such as arrangements for a friend or relative or a family that otherwise could not afford your services. The Rule does not prevent you from doing this. However, you should not inflate the prices on any of your price lists in order to offer all or most of your customers a discount. In that case, the "discounted" prices would be the *accurate* prices and should be reflected on the price lists.

Items 1-4: Minimal Services

Four items that the Rule requires you to list are: (1) forwarding of remains; (2) receiving remains; (3) direct cremation; and (4) immediate burial. Unlike the rest of the goods and services that you must list on the GPL, the prices for these four items **must include** any fee that you will charge consumers for the basic professional services of the funeral director and staff.

Example: Ms. James wants to arrange an immediate burial for her father. In addition, she chooses acknowledgement cards, use of a limousine, and a graveside service. You should charge her the fee for an immediate burial plus the fees for the other items that she wants. But, you should not charge her an additional non-declinable basic services fee. A charge for your basic services is already included in the price for the immediate burial. The required disclosure about the basic services fee (see pages 10-11) informs the consumer of this fact.

For **forwarding of remains** and **receiving remains**, the GPL should list one price for each of these items and describe all services you will provide for the quoted price. The prices for these items should include all charges relating to each service, including any basic services fee and any facilities or equipment fees.

For **direct cremations**, your GPL must state a price range, along with the required disclosure about the availability of an alternative container (see page 10), then list each of the following options within the range:

- one price where the consumer provides the casket or container; and
- a separate price for each direct cremation offered where you provide an

alternative container. The Rule requires you to offer an alternative container for use in direct cremations if you provide direct cremations. (See page 28.)

You also must describe in the GPL the services and container provided for each price. If you wish, you also may list other options, such as direct cremation with a memorial service or direct cremation with scattering of ashes.

The price of the actual cremation of the deceased may or may not be included in your price for direct cremation. If you own a crematory, it would be appropriate to include the cremation charge in this fee. However, if you use a crematory that someone else owns, you may treat this charge as a cash advance item. In that case, you should make clear to the customer that there will be an added charge by the crematory.

For **immediate burials**, you must give a price range, together with each of the following separate options within the range:

- one price where the purchaser provides the casket; and
- a separate price for each form of immediate burial offered where you provide a casket or alternative container. (You are not required to make an alternative container available for this purpose. However, you may choose to offer this option.)

You also must describe in the GPL the services and container provided for each price. If the immediate burial option is available with any casket on your Casket Price List, the General Price List can simply state the price of the service and refer the customer to the Casket Price List for casket prices.

Item 5: Basic services of funeral director and staff (and overhead)

The charge for services of funeral director and staff is a fee for the basic services that you furnish in arranging any funeral.⁽¹⁰⁾ This is the "basic services fee" that is discussed in the Required Disclosures section. If the customer cannot decline this fee, the disclosure that appears on page 11 is required.

This basic services fee should include services that are common to virtually all forms of disposition or arrangements that you offer, such as conducting the arrangements conference, securing the necessary permits, preparing the notices, sheltering of remains, and coordinating the arrangements with the cemetery, crematory, or other third parties. The basic services fee should **not** include charges related to other items that must be separately listed on the General Price List and that the customer may decline to purchase.

Note: You should include any charges for the ordinary sheltering of remains by your funeral home in this basic services fee. However, you can list a separate charge for sheltering of remains if: 1) a significant percentage of your customers do not use the funeral home to hold the remains at any point, or 2) you receive a request to hold the remains for an unusually long period of time.

The basic services fee also may include overhead from various aspects of your business operation, such as the parking lot, reception and arrangements rooms, and other common areas. It also may include insurance, staff salaries, taxes, and fees that you must pay. Alternatively, instead of including all overhead in your basic services fee, you can spread the overhead charges across the various individual goods and services you offer. As a third alternative, you can combine

the first two approaches: spread some portion of the overhead charges across the individual items, while including the remainder of such charges in your basic services fee.

Note: These are the only ways to recoup overhead costs. In addition, if this basic services fee is non-declinable, the fee must include any charges for overhead that have not been allocated to the other goods and services.

You have two options for listing your basic services fee on the General Price List.

Option 1: You may list a separate price for the basic services of the funeral director and staff, together with a list of the principal services provided for the price and the required disclosure (see page 11). If consumers cannot decline this fee, you should include in this separate price all charges for "unallocated overhead" — that is all overhead not distributed among the other items listed on the GPL.

Option 2: Instead of charging a separate basic services fee, you may include the fee in your casket prices. With this alternative, you must include the appropriate disclosure (see page 11) on the General Price List, together with the prices for the individual caskets or with the casket price range (if you have a separate Casket Price List). This fee also must include all charges for the recovery of unallocated overhead. As the disclosure indicates, you must specify the amount of the basic services fee that is included in the price of the caskets. If the customer provides a casket obtained elsewhere, that same basic services fee must be added to the total cost of the arrangements selected.

The Rule expressly states that the basic services fee is the **only non-declinable** fee allowed for services, facilities, or unallocated overhead, unless state or local law requires

otherwise. Other than the basic services fee, you cannot charge any separate fee for overhead. Charging a second non-declinable fee, such as a "basic facilities fee" or a "casket handling fee," in addition to the basic services fee would violate the Rule. Moreover, you cannot list fees for "additional services" of the funeral director and staff, if those fees should be included in the basic services fee or in one of the other items required to be listed on the GPL.

Example: You have a non-declinable fee for the basic services of funeral director and staff. You also list the following fee on your General Price List:

Additional Services of the Funeral Director and Staff: This charge includes:

- a) coordinating and directing funeral ceremony;
- b) paying competitive salaries to employees;
- c) providing 24 hour on-call service to each family;
- d) maintaining funeral service licensing; and
- e) complying with federal and state codes and regulations.

This fee for additional services violates the Rule. All of the charges listed should be included elsewhere on the GPL. You should include charge (a) for coordinating and directing the funeral ceremony in the separate charge for a funeral ceremony. (See the discussion of this charge on page 17.) The other items, (b) through (e), relate to basic overhead. You either should include such charges in the basic services fee or allocate these costs among all the items listed on the GPL.

Items 6 - 16

You must list the following items separately with their respective prices. The charge for each item should include all service fees and any equipment or facility charges for providing that particular good or service. (You will not, however, include any portion of the "basic services fee," discussed above, in any of these items.)

Transfer of remains to funeral home You can choose any pricing method, such as a flat fee, an hourly charge, or a mileage charge. For example, you can charge a flat fee with or without an additional mileage charge for distances beyond a certain specified radius.

Embalming Your price for embalming should include use of the preparation room, as well as the professional services, equipment, and materials involved in performing embalming. In addition, as discussed on page 10, you must tell consumers that the law does not require embalming.

Other preparation of the body This charge should include such services as cosmetic work to prepare the deceased for viewing. Under this category, you can also show a price for washing and disinfecting when that procedure is used instead of embalming.

Use of facilities and staff for viewing You may charge a flat fee or an hourly fee for the use of your facilities for viewing. Your price for a viewing should include charges for both the services of staff and the facilities used in connection with a viewing. You should not list two separate charges relating to a viewing, such as one for the facilities and another for the staff services. However, if you provide staff services for viewing held at another facility, such as a church or a home, you should list a separate fee for such services. (In this situation, a facilities charge would not be appropriate because your own facilities are not being used.)

Use of facilities and staff for funeral ceremony The charge for a funeral ceremony, that is, a commemorative service with the body present, at the funeral home should include both the use of facilities and the necessary staff services. You should not list two separate charges relating to a funeral ceremony, such as one for the facilities and another for the staff services. However, if you provide staff services for a funeral ceremony at another facility, such as a church, you should list a separate fee for such services.

Use of facilities and staff for memorial service This is a charge for a commemorative service without the body present. The charge should include both the use of facilities and the staff services. You should not list two separate charges relating to a memorial service, one for the use of facilities and another for the staff services. However, if you provide staff services for a memorial service at another facility, such as a church, you should list a separate fee for such services.

Use of equipment and staff for graveside service Some families may choose to have a graveside service instead of a funeral ceremony at the funeral home. Your charge for this service should include both staff services and any equipment you may provide (such as a tent and chairs). You should not list two separate charges relating to a graveside service, one for equipment and another for staff services. If your charge for a funeral ceremony normally includes a committal service at the grave following the funeral, you can continue this practice, or you may offer a separate charge for a committal service following a funeral ceremony. The separate charge for a graveside service is intended for those situations where there is no funeral ceremony at the funeral home or elsewhere.

Hearse You can use any pricing method for the use of a hearse, such as a flat fee, an hourly charge, or a mileage charge. For example, you can charge a flat fee with or

without an additional mileage charge for distances beyond a certain specified radius.

Limousine You can use any pricing method for the use of a limousine, such as a flat fee, an hourly charge, or a mileage charge. For example, you can charge a flat fee with or without an additional mileage charge for distances beyond a certain specified radius.

Casket prices You can list casket prices in either of two ways: (1) you can list a casket price range, with the disclosure about the availability of the Casket Price List (see page 11); or (2) you can list the prices of individual caskets on your General Price List.

Outer burial container prices As with casket prices, you can list outer burial container prices in either of two ways: (1) you can list an outer burial container price range, with the relevant disclosure about the Outer Burial Container Price List (see pages 11-12); or (2) you can list the prices of individual containers on your General Price List.

Alternative Price Lists for Special Groups

In certain limited situations, discussed immediately below, you may use alternative price lists.

Remember: Even if you use alternative price lists, you still must comply with all Rule provisions, including mandatory disclosures and itemized prices.

1. Children and Infants

You can set different prices for funeral arrangements for children and infants. You can list the different fees in two ways. You can place these items on your General Price List, Casket Price List and Outer Burial Price List, along with your regular offerings; or you can prepare separate price lists for these arrangements. If you prepare separate price lists, you need not give them out to anyone except those persons inquiring about a funeral for a child or an infant.

2. Government Agencies

Some funeral providers enter into agreements with government agencies to provide funeral arrangements for indigent persons (or other persons entitled to a government benefit). When entering into such arrangements, you must follow all Rule requirements, including giving price lists to the government agent at the time you make or discuss such arrangements. You can add the prices for these special situations to your regular price list or prepare a separate price list for these arrangements. If you prepare a separate price list, you need not make it available to anyone except the government agency or persons who qualify for the special arrangements.

Some government agencies choose to contract for funeral arrangements on a pack-

age basis. You can offer funeral arrangements to anyone — including a government agency — on a package basis, as long as the funeral packages are offered in addition to, not in place of, itemized prices.

When qualifying persons inquire about these package funeral arrangements, you still should provide the GPL, with itemized prices and disclosures, and comply with all other Rule requirements at this time.

Note: You should check your state laws to determine whether arrangements handled as part of an agreement with a government agency can be supplemented or modified by qualifying persons.

3. Religious Groups and Memorial Societies

Some funeral providers enter into agreements with religious groups, burial societies, or memorial societies to arrange funerals for their members at special prices. You are free to enter into such arrangements, but you must still comply with the Rule's requirements. You must provide price lists to representatives of these groups when they inquire about funeral arrangements on behalf of their members. In addition, if an individual group member inquires in-person about funeral arrangements, you must provide the individual with your price lists. Even if a member chooses a package available only to society members, the member must have the opportunity to look at your price lists. You can either have separate price lists for qualifying members or include such prices on your regular price lists.

The Casket Price List: Information and Use

If you do not list the retail price of each casket on your General Price List, you must prepare a separate printed or typewritten Casket Price List (CPL).⁽¹¹⁾

Information to be included

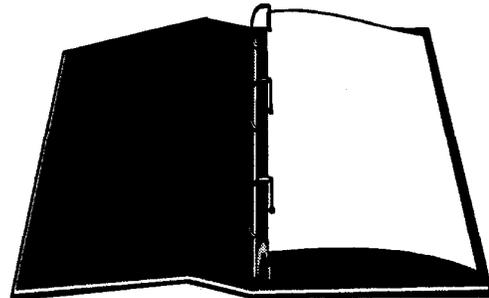
The CPL must include the following basic information:

- the name of your business;
- the caption: "Casket Price List;"
- the effective date for the Casket Price List; and
- the retail price of each casket and alternative container that does not require special ordering, with enough information to identify it.

You must give enough descriptive information about each casket on the CPL to enable consumers to identify the specific casket or container and understand what they are buying. For example, the CPL could describe the exterior appearance (including the gauge of metal or type of wood), the exterior trim, and the interior fabric. You also may give any other information, such as a photograph or manufacturer name and model number. However, a photograph or model number alone is not a sufficient description under the Rule.

You need list only those caskets that you usually offer for sale that do not require special ordering, as well as the alternative container(s) you offer for direct cremation. "Special ordering" means purchasing a casket or container that is not in stock and

not part of your regular offerings to your customers. Except for the requirement that you make an alternative container available if you offer direct cremation, the Rule does not require you to offer any particular caskets or alternative containers. However, both caskets and alternative containers should be listed on the CPL. You should not have a separate list for alternative containers.



The Rule does not require you to list the caskets or containers that you offer in any particular format or order. The Casket Price List can be in any form, including in a notebook or on a chart, as long as it contains the required information, displayed in a clear and conspicuous manner.

Moreover, you do not have to include customized caskets on your CPL, or list caskets that you keep in your inventory to fill pre-existing, pre-need contracts, but which you no longer regularly offer for sale. Nor is it necessary to prepare a new price list if a casket or container is temporarily out-of-stock. You can simply tell the consumer which casket is not available when you give the consumer the CPL. Also, if a particular casket is available in a variety of interior

materials and designs or exterior hardware and finishes, you can simply note that fact on the Casket Price List; you need not list each variation separately.

Using the CPL

You must show the Casket Price List to anyone who asks in person about the caskets or alternative containers that you offer or inquires about their prices. You must offer the CPL when you begin discussing caskets or alternative containers — but before showing these items. Consumers must be able to look at the price list before discussing their options or seeing the actual caskets.

Note: Consumers should not first learn of casket prices by entering the casket showroom and reading price cards placed on individual caskets or by having the funeral director recite such information orally.

You can use individual price cards, but only in addition to a Casket Price List. Unlike the General Price List, you do not have to give the consumer a Casket Price List to keep. However, you may do so if you wish.

The Rule does not require that you display the caskets in any specific manner. (Note, however, that many states have regulations regarding the manner of display.) In fact, the Rule does not require that you display any caskets. Some funeral providers present their selections through a book containing photographs of the various caskets offered for sale. In this case, you must incorporate in the book all the information required for the CPL (see page 19), including the heading "Casket Price List."

If you use a manufacturer's or supplier's casket showroom outside of the funeral home, you must offer the CPL when the discussion of caskets begins. If you begin discussing caskets in your place of business, you must offer the Casket Price List at that time. However, if you do not begin discussing caskets until you arrive at the manufacturer's or supplier's showroom, you do not have to show a CPL until you arrive and the discussion begins.

In addition to using a CPL as described above, you must show a Casket Price List to anyone who wishes to modify the particular casket already purchased under a pre-need contract.

Example: Ms. Todd's father entered into a pre-need contract in 1989. If Ms. Todd chooses to upgrade the casket provided under the pre-need contract or inquires about other casket offerings, you should show her a CPL.

The Outer Burial Container Price List: Information and Use

If you sell outer burial containers and do not list the retail price of each such container on your General Price List, you must prepare a separate printed or typewritten Outer Burial Container Price List (OBC Price List).⁽¹²⁾ The term "outer burial container" refers to any container designed to be placed around the casket in the grave. Such containers may include burial vaults, grave boxes, and grave liners.

Information to be included on the OBC Price List

The OBC Price List must contain the following basic information:

- the name of your business;
- the caption: "Outer Burial Container Price List;"
- the effective date of the price list;
- the retail price of each outer burial container you offer that does not require special ordering, with enough information to identify the container; and
- the following disclosure (discussed earlier on pages 11-12):

In most areas of the country, state, or local law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements.

You do not have to include the phrase "in most areas of the country" in the disclosure if your state or local law does not require a container to surround the casket in the grave.

You must give enough descriptive information about each outer burial container in your OBC Price List to enable consumers to identify the specific container. You need list only those containers that you usually offer for sale and that do not require special ordering. "Special ordering" means purchasing an outer burial container that is not in stock and not part of your regular offerings to your customers. However, the Rule does not require you to offer any particular outer burial containers; in fact, it does not require you to sell any outer burial containers.

The Rule does not require listing the containers that you offer in any particular order. The OBC Price List can be in any form, including in a notebook or on a chart, as long as it contains the required information, including the heading "Outer Burial Container Price List," displayed in a clear and conspicuous manner.

You do not have to list containers that you keep in your inventory to fill pre-existing pre-need contracts, but which you no longer regularly offer for sale. Nor is it necessary to prepare a new price list if a container is temporarily out-of-stock. You can simply tell the consumer which container is not available when you give the consumer the OBC Price List.

Using the OBC Price List

You must show this price list to all persons asking about outer burial containers or their prices. You must offer this price list when you begin to discuss outer burial containers, but before showing the containers. Consumers must be able to look at the price list before discussing their options or seeing the actual containers. (The Rule does not require that you display outer burial containers in any specific manner. Note, however, that many states have regulations regarding the manner of display.)

Again, it is **not** enough for you to tell consumers about price information or to place price cards on top of individual containers or models of containers. You can use individual price cards, but only in addition to an OBC Price List. Unlike the GPL, you do not have to give the OBC Price List for retention. However, you may do so if you wish.

Some funeral providers present their outer burial container selections through a book containing photographs of the various containers offered for sale. If you choose this approach, you must incorporate all the information required for the OBC Price List (see page 21) into the book.

In addition to using an OBC Price List as described above, you must show this price list to anyone who wishes to modify the particular container already purchased under a pre-need contract.



Statement of Funeral Goods and Services Selected: Cost Information and Disclosures

The Statement of Funeral Goods and Services Selected (Statement) is an itemized list of the goods and services that the consumer has selected during the arrangements conference.⁽¹³⁾ The Statement allows consumers to evaluate their selections and to make any desired changes.

The Rule does not require any specific form, heading or caption on the Statement. The information required on the Statement, described below, can be included on a contract or any other document that you give to customers at the conclusion of the arrangements discussion. The categories of goods and services listed on the Statement (or other similar document) should generally correspond to the items listed on the GPL, so that customers can easily compare the two documents.

You must give each consumer a completed Statement at the end of the arrangements discussion. If arrangements are made in-person, you should give the Statement at this time. Giving a consumer a copy of the Statement at the funeral or mailing it to the consumer at some later date does **not** meet the requirements of the Rule.

Note: The Rule does not address the manner or timing of payment. That is between you and the customer.

If arrangements are made over the telephone, you should give the consumer the Statement at the earliest possible date.

Example: On Wednesday evening, Mrs. Shelley calls you to make funeral arrangements for her father and tells you that she will come to the funeral home on Thursday morning to finalize such arrangements. When Mrs. Shelley arrives the next morning, you should give her the required GPL and confirm the arrangements made. Then, once you finalize the arrangements, you should give Mrs. Shelley the Statement.



If a consumer makes all funeral arrangements by telephone, you should make a reasonable attempt to give a completed Statement to the consumer before a final disposition of the remains occurs. If the consumer does not visit the funeral home in-person before the final disposition, you should still give or send a completed Statement to the consumer as soon as possible.

The Rule requires you to include cost information and specific disclosures on the Statement.

Cost Information

You should list all of the individual goods and services that the consumer will purchase, together with the price for each item. You cannot simply lump together goods and services that are listed separately on the GPL.

Example: Your Statement would violate the Rule if it listed only three broad categories for "Services," "Facilities," and "Automotive Equipment."



You may still offer funeral packages, as long as they are offered in addition to, not in place of, itemized prices. If the consumer selects a package (after you offer itemized prices), your Statement should describe the package, listing individually each of the goods and services included in the package, and state the package price.

You also must list each cash advance item separately on the Statement, together with the price for each item. Cash advance items are items of service or merchandise that:

- are described to a consumer as a "cash advance," "accommodation," "cash disbursement," or by any similar term; or
- you obtain from a third party and pay for on the consumer's behalf. (See also cash advance disclosure on page 25.)

Cash advance items may include such things as cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians or singers, nurses, obituary notices, gratuities, and death certificates.

If you don't know the price of a particular cash advance item, you should enter a good faith estimate. However, you should give a written statement of the actual charges before the final bill is paid.

Finally, you must give the consumer the total cost of the arrangements selected (individual goods and services plus cash advance items).

Disclosures

You must place the following three disclosures on your Statement. They should be set out, word-for-word, exactly as the Rule prescribes.

1. Legal Requirements

The first disclosure states that you will charge consumers only for the items they have selected and that you will explain any legal, cemetery, or crematory requirements in writing.⁽¹⁴⁾

Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below.

The form should leave enough space for you to identify and explain in writing any legal, cemetery, or crematory requirement that compels the consumer to purchase a specific funeral good or service. You should enter this information on the Statement before it is given to the customer.

2. Embalming

The second disclosure relates to embalming and the need for prior approval.⁽¹⁵⁾

If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below.

The form should leave enough space for you to explain the reason for embalming. You should enter this information on the Statement before giving it to the customer.

3. Cash Advance Items

The third disclosure relates to your charges for your services in buying cash advance items. If you charge for purchasing a cash advance item, or if you receive and retain a rebate, commission, or trade or volume discount for a cash advance item, you must make the following disclosure:⁽¹⁶⁾

We charge you for our services in obtaining: *(specify cash advance items)*.

You must place this disclosure in immediate conjunction with (directly next to) the list of itemized cash advance items on your Statement and specify those cash advance items to which the disclosure applies. You should not put the disclosure on a separate page or elsewhere on the Statement apart from the list of itemized cash advance items. (See the sample Statement.)

Telephone Price Disclosures

You must give consumers who telephone your place of business and ask about your prices or offerings accurate information from your General Price List, Casket Price List, and Outer Burial Container Price List. You also must answer any other questions about your offerings and prices with any readily available information that reasonably answers the question.⁽¹⁷⁾

Note: You cannot require callers to give their names, addresses, or phone numbers before you give them the requested information. You can ask callers to identify themselves, but you still must answer their questions even if they refuse to do so. You cannot require consumers to come to the funeral home in person to get price information.



You can use an answering machine or answering service to record incoming calls. However, you must respond to questions from callers on an individual basis.

Example: Your answering machine can have a message telling consumers to call a specified number during business hours for information about prices and offerings. You need to provide the requested information when consumers call during those hours, or, you can have an answering machine or answering service take

consumers' names and phone numbers so that you can return the calls at your earliest convenience.

You may have an employee answering your phones who can respond to easier questions regarding your offerings and prices by referring to the printed price lists, but who refers more difficult questions to you. If you are unavailable when the call comes in, the employee can take a message so that you can return the call later.

You do not have to give price and other information after business hours if it is not your normal practice to do so. You can tell consumers who call during non-business hours that you will provide the information during regular business hours. However, if a consumer calls after hours to inquire about an at-need situation, and it is your practice to make funeral arrangements during non-business hours, you should provide price or other information the consumer requests.

If you are in the middle of one arrangements conference when another family calls about your offerings, you can take a message and return the call at a later time.



Misrepresentations Prohibited by the Rule

The Funeral Rule prohibits specific misrepresentations in six areas.⁽¹⁸⁾

1. Embalming

You cannot tell consumers that state or local law requires embalming if that is not true. If state law does require embalming, you may tell the family that embalming is required due to the specific circumstances.

Example: Your state law requires either refrigeration or embalming after a certain period of time. If you have refrigeration facilities available, you must give the consumer the option of either refrigeration or embalming.

You also must tell the consumer in writing that embalming is not required by law except in special circumstances, if relevant. You do this by including on your GPL the mandatory embalming disclosure discussed earlier on page 10.

Note: You must make this disclosure to all consumers, even if embalming is necessary.

Unless state or local law requires embalming, you may not tell consumers that embalming is required for practical purposes in the following situations:

- When the consumer wants a direct cremation;
- When the consumer wants an immediate burial; or
- When refrigeration is available and the consumer wants a closed-casket

funeral with no formal viewing or visitation.

Example: A family wants to arrange a funeral with a formal viewing. The funeral will take place three days after death has occurred on a hot summer day. Your state does not require embalming. You do not have refrigeration facilities. In this situation, you can tell the family that the funeral home requires embalming as a practical necessity to delay decomposition of the remains and to preserve them for viewing. You may not tell the family that the law requires embalming because this is not the case.

Example: A family wants to arrange an immediate burial, but does not want to pay for embalming. Embalming is not required by your state law. Before burial takes place, one family member wants to look briefly at the deceased by lifting the lid of the casket. Here, you may not tell the family that embalming is required. The request to see the deceased does not constitute a formal viewing.

In situations like the above example, you also cannot require the family to pay for "other preparation of the body," if they decline embalming.

2. Casket for Direct Cremation

You cannot tell consumers that state or local law requires them to buy a casket if they are arranging a direct cremation. (A direct cremation is one that occurs without any

formal viewing of the remains or any visitation or ceremony with the body present.) You also must not tell consumers, in the case of direct cremations, that they must buy a casket for any other reason.

If you offer direct cremations, you must make an alternative container available and inform consumers that such containers are available for direct cremations. You do this by including on your GPL the mandatory disclosure about alternative containers discussed on page 10.

An "alternative container" is an unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains. It is made of fiberboard, pressed-wood, composition materials or like materials, with or without an outside covering.

Note: The Rule also prohibits crematories from requiring that a casket be purchased for direct cremation. However, the Rule allows crematories to set standards for the kind of alternative containers that they will accept. For example, a crematory might stipulate that it will accept only rigid containers.

3. Outer Burial Container

You cannot tell consumers that state or local law requires them to buy an outer burial container, if that is not true. You also must tell consumers that state law does not require them to purchase an outer burial container. You satisfy this obligation by including on the Outer Burial Container Price List the mandatory disclosure discussed on page 21. The mandatory disclosure about outer burial containers also tells consumers that grave liners are suitable for meeting any cemetery requirement.

You may not tell consumers that a particular cemetery requires an outer burial container, if that is not true. You may want to keep updated rules of local cemeteries to make sure that your information is accurate. If the particular cemetery does require a container, then you should explain this to the family.

4. Legal and Cemetery Requirements

You cannot tell consumers that any federal, state, or local law or a particular cemetery or crematory requires them to buy a particular good or service, if that is not true. If you do tell a consumer that he or she must buy a particular item because of any legal, cemetery, or crematory requirement, you must identify and describe the particular requirement in writing on the Statement of Funeral Goods and Services Selected.

5. Preservative and Protective Value Claims

You cannot make any representations to consumers that funeral goods or services will delay the natural decomposition of human remains for a long term or an indefinite time. Although the Rule flatly prohibits you from making this representation, the Commission recognizes that it is possible for some funeral goods or services to delay decomposition for a short period.

Example: A family selects a funeral with a viewing. You may explain to the family that embalming will temporarily preserve the body to make it suitable for viewing. But, you cannot tell them that the embalming will preserve the body indefinitely.

You cannot tell consumers that funeral goods (such as caskets or vaults) have protective features or will protect the body from gravesite substances when that is not true.

Federal law requires you to make all warranty information available to consumers. Therefore, you must allow the family to read any of the manufacturer's warranties. However, you should indicate that these claims are made by the manufacturer and not by you.

Example: Mr. Morton has chosen casket A. You should allow him to read the written warranty that the manufacturer offers, but you must not adopt as your own any statement about preservation or protection that you know to be in violation of the Rule. You may want to inform Mr. Morton that the manufacturer has made certain statements about the product, but that you do not have personal knowledge of the protective value of the merchandise.

6. Cash Advance Items

If you mark-up the charge on cash advance items or receive a commission, discount, or rebate that is not passed on to the consumer, you cannot state that the price charged for the cash advance item is the same as your cost. If there is an added charge, or if you receive and keep a rebate, commission, or trade or volume discount, you must tell the consumer that the price is not the same as your cost. You do this by including on your Statement of Funeral Goods and Services Selected the mandatory disclosure discussed on page 25.

The Rule does not prevent you from adding a service charge, nor does it require you to disclose the amount of that charge. However, some states may have laws or regulations that prohibit any mark-up on cash advance items.

7. Other Misrepresentations

Other kinds of misrepresentations, though not specifically prohibited by the Funeral Rule, are nonetheless illegal. The FTC Act prohibits deceptive acts or practices. Likewise, the consumer protection laws of most states prohibit deceptive practices.

What Consumers Cannot Be Required to Purchase

You cannot require consumers to buy unwanted or unneeded goods and services to get the items that they do want. Consumers must be able to choose only the goods and services that they want, with certain limited exceptions noted below.⁽¹⁹⁾

Accordingly, you cannot condition the furnishing of any funeral good or service to a consumer on the purchase of any other funeral good or service except for your basic services fee and any items required by law.⁽²⁰⁾ You also cannot refuse to serve a family because they do not purchase one particular item (e.g., a casket or embalming) or a combination of items or services from you.

In addition, you cannot include the charge for an optional item of service (such as embalming) in a non-declinable basic services fee. This would have the effect of making the optional item a required purchase for every customer.

The Rule expressly prohibits you from charging any fee, as a condition of furnishing any funeral goods or services, other than the fees for:

- The basic services of funeral director and staff (the one non-declinable fee allowed by the Rule);
- The funeral goods and services selected by the consumer; and
- The funeral goods and services required to be purchased by law (or by the cemetery or crematory),⁽²¹⁾ as identified and explained on the itemized Statement (see page 24).

This means that you cannot charge an additional fee or surcharge to consumers who purchase a casket elsewhere. Such a fee would not fall within the three categories of allowable charges listed above. This extra "casket handling" fee is simply a hidden penalty for those consumers who exercise the right to purchase a casket from another seller.

Moreover, you cannot alter your prices based upon the particular selections of each customer. Such a practice also would defeat the purpose of the Rule to give people accurate, itemized price information that affords them the opportunity to select the arrangements they want.

Exceptions: The three exceptions to the consumer's general right to choose only the goods and services wanted are:

- The one non-declinable basic services fee;
- Items required by law (or by the cemetery or crematory); and
- Impossible, impractical or excessively burdensome requests. You do not have to comply with such requests.⁽²²⁾ However, you cannot refuse a request simply because you don't like it or don't approve of it.

Example: During July, a family requests that a funeral occur five days after death, but does not want embalming. You don't have refrigeration facilities. Your state law does not require embalming under any circumstances. However, in this situation, you can refuse to provide these arrangements, unless the family buys

Also
see
the
rule
on
casket
handling
fees

embalming. You can consider such a request impractical or excessively burdensome.

Note: If a customer requests an item that you do not normally offer, you do not have to comply with the request. However, you are free to do so.

"Free" Items: You cannot list any of the 16 items required to be separately itemized on the GPL as "free" or "no charge." Because you recover the cost of the free item in your other prices on the GPL, the customer may not have the choice of rejecting the charge. However, you can offer items not required to be separately itemized on the General Price List (such as acknowledgment cards) at "no charge," as long as your state or local laws do not prohibit this practice.

Prior Approval for Embalming

You can charge a fee for embalming, only in one of the following three circumstances:⁽²³⁾

1. State or local law requires embalming under the particular circumstances regardless of any wishes the family might have. If this is the case, you must note on the itemized Statement of Funeral Goods and Services Selected that embalming was performed because of a legal requirement and briefly explain that requirement. (Also see the discussion on page 27.)

Note: Federal law does not require embalming under any circumstances.

2. You have obtained prior approval for embalming from a family member or other authorized person. (The Rule does not address the issue of who is an "authorized person" to give such approval. That is a matter of state or local law.) You must get express permission to embalm; it cannot be implied.

Example: A family states that they want a viewing before burial and asks you to "prepare" the deceased. You must specifically ask the family for permission to embalm and must receive their permission before you embalm the body.

In order to obtain the family's express consent to embalm, you must: 1) specifically ask for and obtain their permission, and 2) not misrepresent when embalming is required.

Example: While making funeral arrangements, you tell a family that they will be charged for embalming,

no matter what type of funeral arrangements they choose. If they agree to the funeral arrangements in general, this does not constitute express consent to embalm. In addition, if you charge a family for embalming here, you would be charging a second non-declinable fee that violates the Rule (see pages 15-16).

Note: When an individual makes pre-need arrangements and gives express approval for embalming at that time, you do not need to get any additional approval to embalm at the time of death.

The Rule does not require you to get the permission in writing, as long as it is express approval. Some states, however, may require written authorization.

On the Statement of Funeral Goods and Services Selected, you must explain the reason that you charged a fee for embalming. The reason may be that the family requested this service. However, if you tell a consumer that embalming is required for a specific reason (e.g., viewing or legal requirement), then you should list this specific reason on the Statement. Simply noting "family consent" for embalming does not convey the reason for embalming, only that the family has consented.

3. All of the following apply:

- You are unable to contact a family member or other authorized person after exercising due diligence. In trying to contact the family, you must exhaust all means known, given the time constraints.

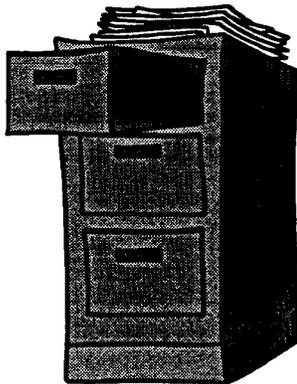
Note: If refrigeration is available, you may be required to take more steps to contact the family and to obtain embalming authorization than if no refrigeration is available.

- You have no reason to believe that the family does not want embalming performed.
- After embalming the body, you obtain subsequent approval. In seeking approval, you must tell the family that if they select a funeral where embalming would be required (such as a funeral with formal viewing), you will charge a fee, but that you will not charge a fee if they select a funeral where embalming would not be necessary (such as a direct cremation with a memorial service). If the family then expressly approves embalming or chooses a funeral where embalming is required, you may charge them for the embalming you performed. But, if the family chooses a funeral where no embalming would be required, you cannot charge for the embalming.

Note: The required disclosure regarding embalming on the itemized Statement (see page 25) will let consumers know that they do not have to pay for embalming if you did not get their prior approval.

Recordkeeping

You must keep price lists for at least one year from the date you last distributed them to customers. You also must keep a copy of each completed Statement of Funeral Goods and Services Selected for at least one year from the date of the arrangements conference. You must make these documents available for inspection by FTC representatives upon request.⁽²⁴⁾



Comprehension of Disclosures

You must make all the required disclosures to consumers in a clear and conspicuous manner. Your goal should be to present the information in a reasonably understandable form. In addition, the disclosures must be legible. The print or type must be large and prominent enough that consumers can easily notice and read the information. Finally, your price lists cannot include any information that alters or contradicts the information the Rule requires you to give in those price lists.⁽²⁵⁾ You can include other information on your price lists if you wish. But, this should not be done in such a way as to confuse or obscure the required information.

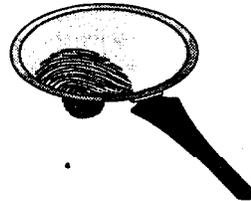
State Exemption Provisions

State agencies may apply to the Commission for a statewide exemption from the Funeral Rule.⁽²⁶⁾ The Commission may grant an exemption if it finds that:

1. there is a state requirement in effect that applies to the same transactions that the Funeral Rule covers; and
2. the state requirement provides an overall level of protection that is as great as, or greater than, the protection provided by the Funeral Rule.

If granted, the exemption will be in effect, as specified by the Commission, for as long as the state administers and enforces effectively the state requirement. An application for state exemption can be filed only by a state government agency. Funeral providers and trade associations cannot file for statewide exemption.

If your state has obtained such an exemption, you only need to comply with your state regulations. If the Commission has not granted your state an exemption, you must comply with all state regulations, as well as the FTC Funeral Rule. You must comply with your state regulations, even if they are more stringent than the Funeral Rule.



Sample Price Lists

The FTC staff has attached these sample price lists to help you to understand the Funeral Rule's requirements. You do not have to adopt these sample price lists. They are only examples. In addition, the fact that the FTC staff has developed these price lists does not mean that this format is the only appropriate one. A variety of formats will satisfy the Rule's requirements.

Sample 1

ABC FUNERAL HOME
100 Main Street
Yourtown, USA 12345
(123) 456-7890

GENERAL PRICE LIST

These prices are effective as of [date].

The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. However, any funeral arrangements you select will include a charge for our basic services and overhead. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.

Basic Services of Funeral Director
and Staff and Overhead

\$ _____

Our services include: conducting the arrangements conference; planning the funeral; consulting with family and clergy; shelter of remains; preparing and filing of necessary notices; obtaining necessary authorizations and permits; coordinating with the cemetery, crematory, or other third parties. In addition, this fee includes a proportionate share of our basic overhead costs.

This fee for our basic services and overhead will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)

Embalming

\$ _____

Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial.

Other Preparation of the Body

\$ _____

[list individual services and prices]

Transfer of Remains to the Funeral Home
(within __ mile radius)

\$ _____

beyond this radius we charge __ per mile

Use of Facilities and Staff For Viewing
at the Funeral Home

\$ _____

Use of Facilities and Staff For Funeral Ceremony
at the Funeral Home \$ _____

Use of Facilities and Staff For Memorial Service
at the Funeral Home \$ _____

Use of Equipment and Staff For Graveside Service \$ _____

Hearse \$ _____

Limousine \$ _____

Caskets \$ _____ to \$ _____
A complete price list will be provided at the funeral home.

Outer Burial Containers \$ _____ to \$ _____
A complete price list will be provided at the funeral home.

Forwarding of Remains to Another Funeral Home \$ _____
Our charge includes: basic services of funeral director and staff; a proportionate share of overhead costs; removal of remains; embalming or other preparation of remains, if relevant; and local transportation.

Receiving Remains from Another Funeral Home \$ _____
Our charge includes: basic services of funeral director and staff; a proportionate share of overhead costs; care of remains; transportation of remains to funeral home and to cemetery or crematory.

Direct Cremation..... \$ _____ to \$ _____
Our charge for a direct cremation (without ceremony) includes: basic services of funeral director and staff; a proportionate share of overhead costs; removal of remains; transportation to crematory; necessary authorizations; and cremation if relevant.

If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are a fiberboard container or an unfinished wood box.

A. Direct cremation with container
provided by the purchaser \$ _____

B. Direct cremation with
a fiberboard container \$ _____

C. Direct cremation with an unfinished wood box..... \$_____

Immediate Burial \$_____ to \$_____

Our charge for an immediate burial (without ceremony) includes: basic services of funeral director and staff; a proportionate share of overhead costs; removal of remains; and local transportation to cemetery.

A. Immediate burial with casket provided
by purchaser \$_____

B. Immediate burial with alternative
container [if offered]..... \$_____

C. Immediate burial with cloth covered
wood casket \$_____

Sample 2

ABC FUNERAL HOME CASKET PRICE LIST

These prices are effective as of [date].

Alternative Containers:

1. Fiberboard Box \$ _____
2. Plywood Box \$ _____
3. Unfinished Pine Box \$ _____

Caskets:

1. Beige cloth-covered soft-wood
with beige interior.... \$ _____
2. Oak stained soft-wood
with pleated blue crepe interior \$ _____
3. Mahogany finished soft-wood
with maroon crepe interior \$ _____
4. Solid White Pine
with eggshell crepe interior \$ _____
5. Solid Mahogany
with tufted rosetan velvet interior \$ _____
6. Hand finished solid Cherry
with ivory velvet interior \$ _____
7. 18 gauge rose colored Steel
with pleated maroon crepe interior
(available in a variety of interiors) \$ _____
8. 20 gauge bronze colored Steel
with blue crepe interior \$ _____
9. Solid Bronze (16 gauge) with brushed finish
white ivory velvet interior \$ _____
10. Solid Copper (32 oz.) with Sealer (Oval Glass)
and medium bronze finish
with rosetan velvet interior \$ _____

Sample 3

ABC FUNERAL HOME OUTER BURIAL CONTAINER PRICE LIST

These prices are effective as of [date].

In most areas of the country, state or local law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements.

1. Concrete Grave Liner \$ _____
2. Acme Reinforced Concrete Vault (lined)..... \$ _____
3. Acme Reinforced Concrete Vault
(stainless steel lined) \$ _____
4. Acme Solid Copper Vault \$ _____
5. Acme Steel Vault (12 gauge) \$ _____

Sample 4

ABC FUNERAL HOME

STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED

Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below.

Deceased: _____
Purchaser: _____
Address: _____
Tel. No. _____

_____ Date of Death _____ Date of Arrangements

Basic Services of Funeral Director and Staff and Overhead \$ _____
Embalming \$ _____

If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below.

Other Preparation of the Body

1. Cosmetic Work for Viewing..... \$ _____
2. Washing and Disinfecting Unembalmed Remains \$ _____
Transfer of Remains to the Funeral Home \$ _____
Use of Facilities and Staff For Viewing \$ _____
Use of Facilities and Staff For Funeral Ceremony \$ _____
Use of Facilities and Staff For Memorial Service \$ _____
Use of Equipment and Staff For Graveside Service \$ _____
Hearse \$ _____

Limousine \$ _____
 Casket \$ _____
 Outer Burial Container \$ _____
 Forwarding of Remains to Another Funeral Home \$ _____
 Receiving Remains from Another Funeral Home \$ _____
 Direct Cremation \$ _____
 Immediate Burial \$ _____

CASH ADVANCE ITEMS

We charge you for our services in obtaining: [specify relevant cash advance items].

Cemetery charges \$ _____
 Crematory charges \$ _____
 Flowers \$ _____
 Obituary notice \$ _____
 Death certificate \$ _____
 Music \$ _____

Total Cash Advance Items \$ _____

**TOTAL COST OF ARRANGEMENTS (including all services, merchandise,
 and cash advance items) \$ _____**

If any legal, cemetery, or crematory requirement has required the purchase of any
 of the items listed above, we will explain the requirement below:

Reason for Embalming:

Endnotes

⁽¹⁾ Note: Before the 1994 revision, the Rule also required the following disclosure on the GPL:
This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers, and newspaper notices. The prices for those items will be shown on your bill or statement describing the funeral goods and services selected. [And if appropriate] We charge you for our services in buying these items.

The Rule no longer requires this disclosure on the GPL. Instead, you must place a shorter version of the disclosure on the Statement of Goods and Services Selected (see page 25). However, you may continue to place this disclosure on your GPL, if you wish.

⁽²⁾ See Section 453.4(b) (2) (i) (A).

⁽³⁾ See Section 453.3(a) (2) (ii).

⁽⁴⁾ See Section 453.3(b) (2).

⁽⁵⁾ See Section 453.2(b) (4) (iii) (C).

⁽⁶⁾ See Section 453.2(b) (4) (iii) (A).

⁽⁷⁾ See Section 453.2(b) (4) (iii) (B).

⁽⁸⁾ See Sections 453.2(b) (4) (ii) - (iii).

⁽⁹⁾ See Section 453.2(b) (6).

⁽¹⁰⁾ See Section 453.2(b) (4) (iii) (C).

⁽¹¹⁾ See Section 453.2(b) (2).

⁽¹²⁾ See Section 453.2(b) (3).

⁽¹³⁾ See Section 453.2(b) (5).

⁽¹⁴⁾ See Section 453.4(b) (2) (i) (B).

⁽¹⁵⁾ See Section 453.5(b).

⁽¹⁶⁾ See Section 453.3(f) (2).

⁽¹⁷⁾ See Section 453.2(b) (1).

⁽¹⁸⁾ See Section 453.3.

⁽¹⁹⁾ See Section 453.4.

⁽²⁰⁾ See Section 453.4(b) (1) (i).

⁽²¹⁾ See Section 453.4(b) (1) (ii).

⁽²²⁾ See Section 453.4(b) (2) (ii).

⁽²³⁾ See Section 453.5

⁽²⁴⁾ See Section 453.6.

⁽²⁵⁾ See Section 453.7.

⁽²⁶⁾ The Commission's staff has issued guidelines regarding exemption proceedings, which were published in the Federal Register on March 29, 1985. See 50 Fed. Reg. 12,521 (1985).

Part 453 — Funeral Industry Practices Revised Rule

Section:

- 453.1 Definitions.
- 453.2 Price disclosures.
- 453.3 Misrepresentations.
- 453.4 Required purchase of funeral goods or funeral services.
- 453.5 Services provided without prior approval.
- 453.6 Retention of documents.
- 453.7 Comprehension of disclosures.
- 453.8 Declaration of intent.
- 453.9 State exemptions.

Authority: 15 U.S.C. 57a(a); 15 U.S.C. 46(g); 5 U.S.C. 552.

§ 453.1 Definitions

(a) **Alternative container** An "alternative container" is an unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

(b) **Cash advance item** A "cash advance item" is any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

(c) **Casket** A "casket" is a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

(d) **Commission** "Commission" refers to the Federal Trade Commission.

(e) **Cremation** "Cremation" is a heating process which incinerates human remains.

(f) **Crematory** A "crematory" is any person, partnership or corporation that performs cremation and sells funeral goods.

(g) **Direct cremation** A "direct cremation" is a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

(h) **Funeral goods** "Funeral goods" are the goods which are sold or offered for sale directly to the public for use in connection with funeral services.

(i) **Funeral provider** A "funeral provider" is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

(j) **Funeral services** "Funeral services" are any services which may be used to: (1) care for and prepare deceased human bodies for burial, cremation or other final disposition; and (2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

(k) **Immediate burial** An "immediate burial" is a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

(l) **Memorial service** A "memorial service" is a ceremony commemorating the deceased without the body present.

(m) **Funeral ceremony** A "funeral ceremony" is a service commemorating the deceased with the body present.

(n) **Outer burial container** An "outer burial container" is any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

(o) **Person** A "person" is any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(p) **Services of funeral director and staff** The "services of funeral director and staff" are the basic services, not to be included in prices of other categories in § 453.2(b)(4), that are furnished by a funeral provider in arranging any funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits, and placing obituary notices.

§ 453.2 Price Disclosures

(a) **Unfair or Deceptive Acts or Practices**

In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in paragraph (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) Preventive Requirements

To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

(1) Telephone Price Disclosure

Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (b)(2) through (4) of this section and any other readily available information that reasonably answers the question.

(2) Casket Price List

(i) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. The list must contain at least the retail prices of all caskets and alternative containers offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) Outer Burial Container Price List

(i) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon

beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."

(4) General Price List

(i)(A) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:

- (1) the prices of funeral goods or funeral services;
- (2) the overall type of funeral service or disposition; or
- (3) specific funeral goods or funeral services offered by the funeral provider.

(B) The requirement in paragraph (b)(4)(i)(A) of this section applies whether the discussion takes place in the funeral home or elsewhere. Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to

embalm, required by § 453.5(a)(2), does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law except in certain special cases, if any. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement under paragraph (b)(4)(i)(A) of this section to give consumers a general price list.

(C) The list required by paragraph (b)(4)(i)(A) of this section must contain at least the following information:

- (1) The name, address, and telephone number of the funeral provider's place of business;
- (2) A caption describing the list as a "general price list"; and
- (3) The effective date for the price list;

(ii) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

- (A) Forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;
- (B) Receiving remains from another funeral home, together with a list of the services provided for any quoted price;
- (C) The price range for the direct cremations offered by the funeral provider, together with:

- (1) a separate price for a direct cremation where the purchaser provides the container;
- (2) separate prices for each direct cremation offered including an alternative container; and

(3) a description of the services and container (where applicable), included in each price;

(D) The price range for the immediate burials offered by the funeral provider, together with:

(1) a separate price for an immediate burial where the purchaser provides the casket;

(2) separate prices for each immediate burial offered including a casket or alternative container; and

(3) a description of the services and container (where applicable) included in that price;

(E) Transfer of remains to funeral home;

(F) Embalming;

(G) Other preparation of the body;

(H) Use of facilities and staff for viewing;

(I) Use of facilities and staff for funeral ceremony;

(J) Use of facilities and staff for memorial service;

(K) Use of equipment and staff for graveside service;

(L) Hearse; and

(M) Limousine.

(iii) Include on the price list, in any order, the following information:

(A) Either of the following:

(1) The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual caskets, disclosed in the manner

specified by paragraph (b)(2)(i) of this section; and

(B) Either of the following:

(1) The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (b)(3)(i) of this section; and

(C) Either of the following:

(1) The price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)". If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services"; or

(2) The following statement: "Please note that a fee of (specify dollar amount) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (specify)." The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase

"and overhead" after the word "services." The statement must be placed on the general price list together with the casket price range, required by paragraph (b)(4)(iii)(A)(1) of this section, or together with the prices of individual caskets, required by (b)(4)(iii)(A)(2) of this section.

(iv) The services fee permitted by § 453.2(b)(4)(iii)(C)(1) or (C)(2) is the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.

(5) Statement of Funeral Goods and Services Selected

(i) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

(A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;

(B) Specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); and

(C) The total cost of the goods and services selected.

(ii) The information required by this paragraph (b)(5) may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(6) Other Pricing Methods

Funeral providers may give persons

any other price information, in any other format, in addition to that required by § 453.2(b)(2), (3), and (4) so long as the statement required by § 453.2(b)(5) is given when required by the rule.

§ 453.3 Misrepresentations

(a) Embalming Provisions

(1) Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires that a deceased person be embalmed when such is not the case;

(ii) Fail to disclose that embalming is not required by law except in certain special cases, if any.

(2) Preventive requirements

To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §§ 453.4(b)(1) and 453.5(2), funeral providers must:

(i) Not represent that a deceased person is required to be embalmed for:

(A) direct cremation;

B) immediate burial; or

(C) a closed casket funeral without viewing or visitation when refrigeration is available and when state or local law does not require embalming; and

(ii) Place the following disclosure on the general price list, required by § 453.2(b)(4), in immediate conjunction with the price shown for embalming: "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right

to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial." The phrase "except in certain special cases" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.

(b) Casket for Cremation Provisions

(1) Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires a casket for direct cremations;

(ii) Represent that a casket is required for direct cremations.

(2) Preventive Requirements

To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(a)(1), funeral providers must place the following disclosure in immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (specify containers)." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) Outer Burial Container Provisions

(1) Deceptive Acts or Practices

In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local laws

or regulations, or particular cemeteries, require outer burial containers when such is not the case;

(ii) Fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(2) Preventive Requirement

To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by § 453.2(b)(3)(i), or, if the prices of outer burial containers are listed on the general price list, required by § 453.2(b)(4), in immediate conjunction with those prices: "In most areas of the country, state or local law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements."

The phrase "in most areas of the country" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require a container to surround the casket in the grave.

(d) General Provisions on Legal and Cemetery Requirements

(1) Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(2) Preventive Requirements

To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in §§ 453.3(a)(1), 453.3(b)(1), and 453.3(c)(1), funeral

providers must identify and briefly describe in writing on the statement of funeral goods and services selected (required by § 453.2(b)(5)) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) Provisions on Preservative and Protective Value Claims

In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) Represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time;

(2) Represent that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.

(f) Cash Advance Provisions

(1) Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case;

(ii) Fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) Preventive Requirements

To prevent these deceptive acts or practices, funeral providers must place the following sentence in the itemized statement of funeral goods and services selected, in immediate conjunction with

the list of itemized cash advance items required by § 453.2(b)(5)(i)(B): "We charge you for our services in obtaining: (specify cash advance items)," if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.

§ 453.4 Required Purchase of Funeral Goods or Funeral Services.

(a) Casket for Cremation Provisions

(1) Unfair or Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket be purchased for direct cremation.

(2) Preventive Requirement

To prevent this unfair or deceptive act or practice, funeral providers must make an alternative container available for direct cremations, if they arrange direct cremations.

(b) Other Required Purchases of Funeral Goods or Funeral Services

(1) Unfair or Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to:

(i) Condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part;

(ii) Charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for: (1) services of funeral director and staff, permitted by

§ 453.2(b)(4)(iii)(C); (2) other funeral services and funeral goods selected by the purchaser; and (3) other funeral goods or services required to be purchased, as explained on the itemized statement in accordance with § 453.3(d)(2).

(2) Preventive Requirements

(i) To prevent these unfair or deceptive acts or practices, funeral providers must:

(A) Place the following disclosure in the general price list, immediately above the prices required by § 453.2(b)(4)(ii) and (iii): "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected." **Provided, however,** that if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our basic services" between the second and third sentences of the statement specified above herein. The statement may include the phrase "and overhead" after the word "services" if the fee includes a charge for the recovery of unallocated funeral provider overhead;

(B) Place the following disclosure in the statement of funeral goods and services selected, required by § 453.2(b)(5)(i): "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below."

(ii) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

§ 453.5 Services Provided Without Prior Approval

(a) Unfair or Deceptive Acts or Practices

In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

(1) State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or

(2) Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

(3) The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) Preventive Requirement

To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized statement of funeral goods and services selected, required by § 453.2(b)(5), the statement: "If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

§ 453.6 Retention of Documents

To prevent the unfair or deceptive acts or practices specified in § 453.2 and § 453.3 of this rule, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in §§ 453.2(b)(2) through (4), as applicable, for at least one year after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by § 453.2(b)(5), for at least one year from the date of the arrangements conference.

§ 453.7 Comprehension of Disclosures

To prevent the unfair or deceptive acts or practices specified in § 453.2 through § 453.5, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner. Providers shall not include in the casket, outer burial container, and general price lists, required by §§ 453.2(b)(2)-(4), any statement or information that alters or contradicts the information required by this Part to be included in those lists.

§ 453.8 Declaration of Intent

(a) Except as otherwise provided in § 453.2(a), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the preventive requirements specified in this rule;

(b) The provisions of this rule are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

(c) This rule shall not apply to the business of insurance or to acts in the conduct thereof.

§ 453.9 State Exemptions

If, upon application to the Commission by an appropriate state agency, the Commission determines that:

(a) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule;

then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

By direction of the Commission.

Donald S. Clark
Secretary

1999

Date (time) needed (SOON)

LRB b. 076211

CAUCUS BUDGET AMENDMENT
[ONLY FOR CAUCUS]

D-NOTE

MDK:cmh:

See form AMENDMENTS — COMPONENTS & ITEMS.

CAUCUS AMENDMENT
TO ASSEMBLY SUBSTITUTE AMENDMENT 1
TO 1999 ASSEMBLY BILL 133

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

At the locations indicated, amend the substitute amendment as follows:

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

(SEE INSERTS 1 & 2: attached)

1 section may be construed to prohibit a cemetery authority from charging a
2 reasonable fee to recover the costs related to providing for a burial during difficult
3 weather conditions.

4 SECTION 8. 440.08 (2) (a) 37. of the statutes is amended to read:

5 440.08 (2) (a) 37. Funeral establishment, class A: June 1 of each odd-numbered
6 year; \$41.

7 SECTION 9. 440.08 (2) (a) 37m. of the statutes is created to read:

8 440.08 (2) (a) 37m. Funeral establishment, class B: June 1 of each
9 odd-numbered year; \$47.

10 SECTION 10. 440.92 (4) (a) (intro.) of the statutes is amended to read:

11 440.92 (4) (a) (intro.) Any person who sells or solicits the sale of cemetery
12 merchandise under a preneed sales contract is not required to be registered under
13 sub. (1) and the requirements of sub. (3) (a) and (b) do not apply to the sale if all
14 payments received under the preneed sales contract are trusted as required under
15 s. 445.125 (1) (a) 1. and (am) or if all of the following conditions are met:

16 *#. Page 1375, line 12: open that line insert:*

16 SECTION 440.947 of the statutes is created to read:

2922g 3(B)

17 440.947 Disclosures and representations for certain sales. (1) In this
18 section:

19 (a) "Cash advance item" means personal property or a service that is obtained
20 by a person from a 3rd party and that is paid for by the person on behalf of, and
21 subject to reimbursement from, a buyer of a casket, outer burial container or
22 cemetery merchandise from the person. "Cash advance item" includes cemetery or
23 crematory services, pallbearers, public transportation, clergy honoraria, flowers,
24 musicians or vocalists, nurses, obituary notices, gratuities and death certificates.

1 (b) "Direct cremation service" means the disposition of human remains by
2 cremation without any formal viewing, visitation or ceremony in which the body of
3 the deceased is present.

4 (c) "Outer burial container" has the meaning given in s. 157.061 (11g). ✓

5 (d) "Person" does not include a person issued a funeral director's license under
6 ch. 445 or an operator of a ~~class~~ funeral establishment, as defined in s. 445.01 (~~11g~~). ✓ 7

7 (2) No person may sell or offer for sale a casket, outer burial container or
8 cemetery merchandise unless the person has provided to the buyer, prior to the sale,
9 a price list in a clearly legible and conspicuous format that includes each of the
10 following:

11 (a) The name, address and telephone number of the person's place of business.

12 (b) The effective date of the price list.

13 (c) The price and a description of each type of casket, outer burial container and
14 cemetery merchandise that the person usually offers for sale without special
15 ordering. A description required under this paragraph shall enable a buyer to
16 identify and understand the specific casket, outer burial container or cemetery
17 merchandise that is offered for sale.

18 (d) If the person usually offers an outer burial container for sale without special
19 ordering, a statement that is identical to the following: "State law does not require
20 that you buy a container to surround the casket in the grave. However, many
21 cemeteries require that you have such a container so that the grave will not sink in.
22 Either a grave liner or a burial vault will satisfy these requirements."

23 (e) The price and a description of any direct cremation or burial service offered
24 by the person and, if the person offers direct cremation service, a statement that is
25 identical to the following: "If you want to arrange a direct cremation, you can use an

1 alternative container. Alternative containers encase the body and can be made of
2 materials like fiberboard or composition materials (with or without an outside
3 covering). The containers that we provide are [insert a description of the
4 containers offered for direct cremation].”

5 (f) The price and a description of any service offered by the person for the use
6 any facilities, equipment or staff related to a viewing, funeral ceremony, memorial
7 service or graveside service.

8 (g) The amount and a description of any basic service fee that is charged in
9 addition to any price described under pars. (c), (e) or (f).

10 (3) A person who sells a casket, outer burial container or cemetery merchandise
11 shall, immediately after completing the sale, provide the buyer with a form in a
12 clearly legible and conspicuous format that includes each of the following:

13 (a) The price and a description of the casket, outer burial container or cemetery
14 merchandise.

15 (b) The price and a description of any service specified in sub. (2) (e) or (f) that
16 is sold in addition to the casket, outer burial container or cemetery merchandise.

17 (c) The amount and a description of any basic service fee that is charged in
18 addition to any price described under par. (a) or (b).

19 (d) A statement that the buyer may be charged only for the items that he or she
20 has selected or that are required by law and a description and explanation of any
21 items that he or she is required by law to purchase.

22 (e) A description of any charge for a cash advance item, including any
23 commission, discount or rebate that the person receives for a cash advance item from
24 the 3rd party from which the cash advance item is obtained and that the person does
25 not pass on to the buyer.

1 (4) No person who sells a casket, outer burial container or cemetery
2 merchandise may do any of the following:

3 (a) Provide inaccurate information regarding the information specified in sub.
4 (2) (c), (e), (f) or (g) to a prospective buyer who contacts the person by telephone.

5 (b) Represent that state or local law requires a prospective buyer to purchase
6 a casket for a direct cremation service.

7 (c) Misrepresent to a prospective buyer any requirement under federal, state
8 or local law or under the rules of any cemetery, mausoleum or crematory relating to
9 the use of a casket, outer burial container or cemetery merchandise.

10 (d) Represent that any casket, outer burial container or cemetery merchandise
11 will delay the natural decomposition of human remains for a long or indefinite period
12 of time.

13 (e) Require a buyer to pay an additional fee or surcharge if the buyer purchases
14 a casket, outer burial container or cemetery merchandise from a 3rd party.

15 (f) Alter a price specified in sub. (2) (c), (e), (f) or (g) based on the type of casket,
16 outer burial container or cemetery merchandise purchased by a buyer.

17 (5) A person who sells a casket, outer burial container or cemetery merchandise
18 shall retain a copy of the price list specified in sub. (2) (intro.) for at least one year
19 after the date of its last distribution to a prospective buyer and shall retain a copy
20 of each form that is provided to a buyer under sub. (3) (intro.) for at least one year
21 after completion of a sale. A person required to retain a copy under this subsection
22 shall make the copy available for inspection by the department upon request.

23 SECTION ~~11~~ 440.95 (3) of the statutes is amended to read:

2922r
B

INSERT 262

1 requirements of s. 445.125 (3m) and rules promulgated by the funeral directors
2 examining board under s. 445.125 (3m) (j) 1. b.

3 SECTION 45. 632.41 (2) (b) 3. of the statutes is amended to read:

4 632.41 (2) (b) 3. A life insurance policy sold under subd. 1. shall permit the
5 policyholder to designate a different beneficiary, after written notice to the current
6 beneficiary, and a different funeral director or operator of a class A funeral
7 establishment that is to receive the assignment of proceeds, after written notice to
8 the current funeral director or operator of the class A funeral establishment.

9 SECTION 46. Initial applicability.

10 (1) The treatment of sections 440.92 (4) (a) (intro.) and 445.125 (1) (a) 2. and
11 (am) of the statutes first applies to contracts and agreements entered into on the
12 effective date of this subsection.

Initial App

13 #. Page 1595, line 21: after that line insert:
14 (2) The treatment of section 440.947 of the statutes first applies to sales or
15 offers to sell that are made on the effective date of this subsection.

16 ~~(3) The treatment of section 445.13 (1) of the statutes first applies to~~ DISCLOSURES AND REPRESENTATIONS FOR CERTAIN SALES.
17 unprofessional conduct and violations that occur on the effective date of this
18 subsection. (ESS)

18 SECTION 47. Effective date.

19 (1) This act takes effect on the first day of the 6th month beginning after
20 publication.

21 (END)

END of INSERT

letter "g"

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBb0762/1dn
MDK:.....

cmr

Robert Miller:

Please review this amendment very carefully to make sure that it achieves your intent. In preparing the amendment, I relied on a summary of the federal requirements prepared by the Federal Trade Commission (FTC), "Complying with the Funeral Rule", which is dated August 1995. Please contact me if you want a copy of the FTC summary or if you have any questions.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBb0762/1dn
MDK:cmh:km

June 22, 1999

Robert Miller:

Please review this amendment very carefully to make sure that it achieves your intent. In preparing the amendment, I relied on a summary of the federal requirements prepared by the Federal Trade Commission (FTC), "Complying with the Funeral Rule", which is dated August 1995. Please contact me if you want a copy of the FTC summary or if you have any questions.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0762/1
MDK:cmh:km

ARC:.....Miller - Am. #35, Consumer disclosures for funeral goods and services

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 1375, line 12: after that line insert:

3 **"SECTION 2922g.** 440.947 of the statutes is created to read:

4 **440.947 Disclosures and representations for certain sales.** (1) In this
5 section:

6 (a) "Cash advance item" means personal property or a service that is obtained
7 by a person from a 3rd party and that is paid for by the person on behalf of, and
8 subject to reimbursement from, a buyer of a casket, outer burial container or
9 cemetery merchandise from the person. "Cash advance item" includes cemetery or

1 crematory services, pallbearers, public transportation, clergy honoraria, flowers,
2 musicians or vocalists, nurses, obituary notices, gratuities and death certificates.

3 (b) “Direct cremation service” means the disposition of human remains by
4 cremation without any formal viewing, visitation or ceremony in which the body of
5 the deceased is present.

6 (c) “Outer burial container” has the meaning given in s. 157.061 (11g).

7 (d) “Person” does not include a person issued a funeral director’s license under
8 ch. 445 or an operator of a funeral establishment, as defined in s. 445.01 (7).

9 (2) No person may sell or offer for sale a casket, outer burial container or
10 cemetery merchandise unless the person has provided to the buyer, prior to the sale,
11 a price list in a clearly legible and conspicuous format that includes each of the
12 following:

13 (a) The name, address and telephone number of the person’s place of business.

14 (b) The effective date of the price list.

15 (c) The price and a description of each type of casket, outer burial container and
16 cemetery merchandise that the person usually offers for sale without special
17 ordering. A description required under this paragraph shall enable a buyer to
18 identify and understand the specific casket, outer burial container or cemetery
19 merchandise that is offered for sale.

20 (d) If the person usually offers an outer burial container for sale without special
21 ordering, a statement that is identical to the following: “State law does not require
22 that you buy a container to surround the casket in the grave. However, many
23 cemeteries require that you have such a container so that the grave will not sink in.
24 Either a grave liner or a burial vault will satisfy these requirements.”

1 (e) The price and a description of any direct cremation or burial service offered
2 by the person and, if the person offers direct cremation service, a statement that is
3 identical to the following: “If you want to arrange a direct cremation, you can use an
4 alternative container. Alternative containers encase the body and can be made of
5 materials like fiberboard or composition materials (with or without an outside
6 covering). The containers that we provide are [insert a description of the
7 containers offered for direct cremation].”

8 (f) The price and a description of any service offered by the person for the use
9 any facilities, equipment or staff related to a viewing, funeral ceremony, memorial
10 service or graveside service.

11 (g) The amount and a description of any basic service fee that is charged in
12 addition to any price described under pars. (c), (e) or (f).

13 **(3)** A person who sells a casket, outer burial container or cemetery merchandise
14 shall, immediately after completing the sale, provide the buyer with a form in a
15 clearly legible and conspicuous format that includes each of the following:

16 (a) The price and a description of the casket, outer burial container or cemetery
17 merchandise.

18 (b) The price and a description of any service specified in sub. (2) (e) or (f) that
19 is sold in addition to the casket, outer burial container or cemetery merchandise.

20 (c) The amount and a description of any basic service fee that is charged in
21 addition to any price described under par. (a) or (b).

22 (d) A statement that the buyer may be charged only for the items that he or she
23 has selected or that are required by law and a description and explanation of any
24 items that he or she is required by law to purchase.

1 (e) A description of any charge for a cash advance item, including any
2 commission, discount or rebate that the person receives for a cash advance item from
3 the 3rd party from which the cash advance item is obtained and that the person does
4 not pass on to the buyer.

5 (4) No person who sells a casket, outer burial container or cemetery
6 merchandise may do any of the following:

7 (a) Provide inaccurate information regarding the information specified in sub.
8 (2) (c), (e), (f) or (g) to a prospective buyer who contacts the person by telephone.

9 (b) Represent that state or local law requires a prospective buyer to purchase
10 a casket for a direct cremation service.

11 (c) Misrepresent to a prospective buyer any requirement under federal, state
12 or local law or under the rules of any cemetery, mausoleum or crematory relating to
13 the use of a casket, outer burial container or cemetery merchandise.

14 (d) Represent that any casket, outer burial container or cemetery merchandise
15 will delay the natural decomposition of human remains for a long or indefinite period
16 of time.

17 (e) Require a buyer to pay an additional fee or surcharge if the buyer purchases
18 a casket, outer burial container or cemetery merchandise from a 3rd party.

19 (f) Alter a price specified in sub. (2) (c), (e), (f) or (g) based on the type of casket,
20 outer burial container or cemetery merchandise purchased by a buyer.

21 (5) A person who sells a casket, outer burial container or cemetery merchandise
22 shall retain a copy of the price list specified in sub. (2) (intro.) for at least one year
23 after the date of its last distribution to a prospective buyer and shall retain a copy
24 of each form that is provided to a buyer under sub. (3) (intro.) for at least one year

1 after completion of a sale. A person required to retain a copy under this subsection
2 shall make the copy available for inspection by the department upon request.

3 **SECTION 2922r.** 440.95 (3) of the statutes is amended to read:

4 440.95 (3) Except as provided in subs. (1) and (2), any person who violates s.
5 440.91 or 440.947 or any rule promulgated under s. 440.91 may be fined not more
6 than \$1,000 or imprisoned for not more than 6 months or both.”

7 **2.** Page 1595, line 21: after that line insert:

8 “(2g) DISCLOSURES AND REPRESENTATIONS FOR CERTAIN SALES. The treatment of
9 section 440.947 of the statutes first applies to sales or offers to sell that are made on
10 the effective date of this subsection.”

11 (END)