

# New Britain Memorial Donald D. Sagarino Funeral Home

Good morning Sen. Gerratana, Rep. Johnson and members of the Public Health Committee. My name is Jonathan Raymond and I am a licensed embalmer at New Britain Memorial-Donald D. Sagarino in New Britain, Newkirk & Whitney and Benjamin J. Callahan in East Hartford and Glastonbury Funeral Home in Glastonbury, where I have worked for the past 10 years.

I am here today to testify on SB 435, which I believe was intended to prevent non-licensed individuals, specifically "consultants," from holding themselves out to be licensed funeral directors, a laudable goal we in the industry can all understand. However, I have some serious reservations about the language, as proposed, as I believe it is overly broad and would have some unintended consequences for our industry.

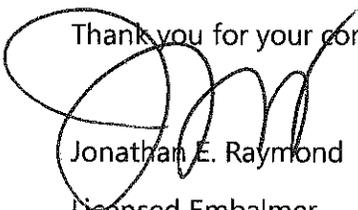
As I read it, if this bill is adopted as is it would require that most all tasks conducted routinely in funeral homes across the state – even those as simple as calling a celebrant to conduct services, filing the necessary paperwork to obtain a burial or cremation permit, and filing a death certificate, would require a funeral director's license.

This would be an extremely costly, devastating blow to the funeral service industry, which is already faced with a serious shortage of licensed personnel. I also have serious concerns about the provisions dealing with cash advances the FTC RECENTLY ISSUE AN INTERPRITATION OF THE Funeral Rule (16 C.F.R. 453.1(b) regarding cash advance items. The Rule does not require that funeral providers make cash advances, nor does it require that any particular item be designated as a "cash advance" item. The Rule simply requires that when a funeral provider states or implies that it will make a purchase on behalf of a consumer, that the provider disclose that it charges for its services in buying that item. Compliance with this requirement is intended to dispel any impression created by the provider that the consumer will be charged the same amount as the provider paid for the item.

Finally, while this proposal may be well-intentioned, as currently drafted it has some serious flaws.

I respectfully urge the Committee to reject the bill as written and re-examine its substance. As currently crafted, this proposal would make it nearly impossible to serve the needs of our families in a manner they so richly deserve and have come to expect.

Thank you for your consideration.

  
Jonathan E. Raymond

Licensed Embalmer





UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 7, 2004

David A. Clanton, Esq.  
Baker & McKenzie  
815 Connecticut Ave., N.W.  
Washington, D.C. 20006

Re: Staff Opinion on Cash Advances under the Funeral Rule

Dear Mr. Clanton:

This letter responds to your letter dated June 25, 2004, requesting an informal Federal Trade Commission staff opinion on the definition of the term "cash advance" under the Commission's Rule on Funeral Industry Practices, 16 C.F.R. § 453.1(b) ("the Funeral Rule" or "the Rule"). Specifically, you requested an opinion on whether the Rule's requirements with regard to cash advances cover all goods or services purchased by a funeral provider from a third party and resold by the provider to consumers or whether they apply only to certain types of purchases.

In our opinion, the term "cash advance" in the Rule applies only to those items that the funeral provider indicates, explicitly or implicitly, will be purchased by the funeral provider on behalf of the consumer. This conclusion is based on the following analysis.

Analysis

The Commission promulgated the original Funeral Rule on September 24, 1982, making it fully effective on April 30, 1984.<sup>1</sup> The Commission amended the Rule in 1994, following a lengthy rule review proceeding, and that 1994 amended Rule continues to be in effect.<sup>2</sup> Both the original Rule and the 1994 Rule define "cash advance" as:

[a]ny 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

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<sup>1</sup> 47 Fed. Reg. 42260 (Sept. 24, 1982).

<sup>2</sup> 59 Fed. Reg. 1592 (Jan. 11, 1994). All references to "the Funeral Rule" or "the Rule" are to the 1994 amended Rule which is currently in effect. References to the 1982 Rule refer to the "original Rule."

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. § 453.1(b).

In addressing cash advance items, the Commission created an affirmative duty to disclose to consumers that the price being charged for a cash advance item is not the same as the cost to funeral provider when such is the case. 16 CFR § 453.3(f)(ii). The purpose of this "cash advance" disclosure was to address a then extant problem in the marketplace. Specifically, some funeral providers misrepresented that they would obtain goods or services for their customers at cost, when in fact the providers profited by marking up the price of the items.<sup>3</sup> Final Staff Report (June 1978) at 249 ("[t]his terminology [i.e., "cash advance item] clearly indicates the basic conception . . . that the family is simply reimbursing the funeral director for cash outlays. . . Our investigation revealed, however that some funeral homes have generated extra revenues by charging their customers more for cash advance items than the funeral home actually paid out."). The Commission, therefore, made clear, in the Statement of Basis and Purpose for the original Rule, that the disclosure of "cash advance" items was intended to correct the implied representation that the cost to the consumer is the same as the cost to the funeral home.

[C]onsumers believe that items labeled "cash advances" . . . are being provided at cost. There is an implicit representation that the cash advance transaction involves merely a forwarding of cash by the funeral provider and a subsequent dollar-for-dollar reimbursement by the consumer. . . The use of this term in connection with items such as flowers . . . which consumers could easily obtain from a third party, creates the expectation that the amount billed the consumer is the same as the amount paid by the funeral provider.<sup>4</sup>

In order to dispel this misleading impression, the Rule prohibits funeral providers from misrepresenting that the price charged for a cash advance item is the same as the provider's cost, and requires providers to disclose the fact that they charge for their services when purchasing cash advance items.<sup>5</sup> These prohibitions and disclosures are triggered by: 1) an explicit statement

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<sup>3</sup> This mark up was achieved both directly and indirectly. Final Staff Report (June 1978) at 249 ("[s]ometimes, this has been accomplished by simply inflating the amount of the charge on the customer's bill. In other instances, the same effect has been achieved by the funeral home securing some form of kickback or rebate from the supplier of the cash advance item after charging the customer the full price.")

<sup>4</sup> 47 Fed. Reg. 42278-42279 (Sept. 24, 1982).

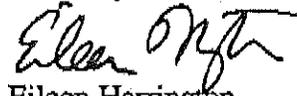
<sup>5</sup> Sec. 453.3(f). The original Rule required the disclosure to be placed on both the general price list and on the statement of funeral goods and services selected ("final statement"). The amended Rule deleted the requirement that the disclosure appear on the general price list, but retained the requirement that it appear on the statement. In recommending this change to the

from the funeral provider that it will obtain a good or service from a third party on the purchaser's behalf; or 2) an implicit statement of the same using terms such as "cash advance," "accommodation," "cash disbursement," or any other similar term.

The Rule does not require that funeral providers make cash advances, nor does it require that any particular item be designated as a "cash advance" item. The Rule simply requires that when a funeral provider states or implies that it will make a purchase on behalf of a consumer, that the provider disclose that it charges for its services in buying that item. Compliance with this requirement is intended to dispel any impression created by the provider that the consumer will be charged the same amount as the provider paid for the item.

The opinions expressed in this letter are solely those of Commission staff and do not necessarily reflect the views of any individual Commissioner or the Commission as a whole.

Sincerely,



Eileen Harrington  
Associate Director  
Division of Marketing Practices

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Commission, the staff reasoned that the duplicative disclosure provided no additional benefit to consumers because the actual cash advance items first appear on the final statement. In addition, staff believed that deleting the unnecessary disclosure would simplify the general price list and lessen the burden on industry. Final Staff Report (1990) at 200-201. The amended Rule also changed the language of § 453.3(f)(2) to clarify that providers only need list the cash advance items for which the provider charges a mark up.