



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

Office of Policy Planning

March 14, 2025

Senator Micheal Bergstrom
State Senator
State of Oklahoma
2300 North Lincoln Blvd – Room 426
Oklahoma City OK 73105-4819

Re: Senate Bill 559

Dear Senator Bergstrom:

I am the Acting Director of the Federal Trade Commission’s (“FTC”) Office of Policy Planning. My office is charged with engaging with state legislatures, regulatory boards, and officials on competition and consumer protection principles to champion the interests of the American people. Promoting competition, enhancing consumer choice, and reducing regulatory barriers that raise consumer prices, prop up unfair monopolies, or otherwise restrain the competitive economy are central goals for the FTC under Chairman Andrew Ferguson. I write this letter to advance those objectives.

I understand that the Oklahoma legislature is considering Senate Bill 559 (“SB 559” or “Bill”)¹, which would amend Oklahoma’s Funeral Services Licensing Act² (FSLA) to provide that businesses selling funeral service merchandise not be subject to the FSLA. As a result, the Bill would enable any business to sell caskets, urns, and other funeral service merchandise to the public. This letter responds to your March 11, 2025, inquiry about how SB 559 could affect consumers and competition in the provision of funeral service merchandise. I write to highlight the FTC’s prior work in this area that you may find informative as you consider this Bill.

The FTC has developed extensive expertise in the regulation of funeral goods and services.³ The FTC began intensively studying the industry in 1972, interviewing consumers,

¹ Oklahoma 1st Regular Session of the 60th Legislature, Senate Bill 559 (introduced January 14, 2025).

² OKLA. STAT. tit. 59, § 395.1 *et seq.*

³ Identifying and Tackling Dysfunctional Markets – Note submitted by the US Federal Trade Commission at 11–15 (Organization for Economic Competition and Development, Competition and Consumer Policy Committees, Oct. 5, 2004), https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2000-2009/us_ftc_paper_on_identifying_and_tackling_dysfunctional_markets.pdf (detailing the FTC’s efforts to promote competition and protect consumers in the funeral service and merchandise industry through rulemaking, enforcement actions, and advocacy to state legislatures).

industry stakeholders, and state officials, resulting in an industry-wide investigation and an initial staff report recommending the FTC initiate a rulemaking proceeding.⁴ During the rulemaking, the FTC received over 9,000 comments from the public and conducted 52 days of hearings in six cities, during which 315 witnesses presented testimony spanning more than 14,000 pages of transcript.⁵ Informed by its findings, the FTC promulgated the Funeral Industry Practices Rule⁶ (“Funeral Rule” or “Rule”) in 1982, and the FTC actively enforces the Rule to this day.⁷

In promulgating the Rule, the FTC found that funeral service providers often required the purchase of pre-packaged funeral bundles, thereby preventing consumers from purchasing funeral merchandise such as caskets or urns separately.⁸ The Rule “generally requires funeral providers to ‘unbundle’ the[ir] goods and services” so that a consumer can “make an itemized selection” and only purchase “the goods and services they want.”⁹ A decade later, the FTC determined that funeral service providers were imposing “casket-handling fees” in “direct response to third-party competition” and to make up for the loss of markups on captive casket sales.¹⁰ Indeed, the FTC observed that the Rule’s original price disclosure and unbundling requirements had enabled “third-party casket sellers and low-cost funeral homes to enter the market and . . . helped them compete.”¹¹ The casket handling fees adopted by funeral service providers in response, the FTC found, “penalize[d] consumers” and “frustrate[d] the Rule’s basic unbundling requirement.” Therefore, in 1994, the FTC amended the Rule to “effectively eliminate” such fees.¹²

In upholding the FTC’s 1994 amendments, the U.S. Court of Appeals for the Third Circuit similarly observed that “[p]rior to enactment of the Funeral Rule, funeral service providers . . . were virtually the only entities selling funeral goods.”¹³ And the Rule’s unbundling requirement paved the way for other sellers to enter the market, supplying caskets “usually at a substantially lower price than did the funeral homes.”¹⁴

⁴ Fed. Trade Comm., Trade Regulation Rule, Funeral Industry Practices, 47 Fed. Reg. 42260, 42261 (Sept. 24, 1982).

⁵ *Id.* at 42261–62.

⁶ 16 C.F.R. pt. 453.

⁷ The FTC conducts investigations and enforcement actions pursuant to the Funeral Rule, and updates it to reflect developments in the marketplace. *See, e.g.*, Stipulated Order for Permanent Injunction and Monetary Judgments, *U.S. v. Funeral Cremation Grp. of N. Am., LLC*, No. 0:22-cv-60779 (S.D. Fla. 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/Stipulated-Order-FLS-022cv60779-63-0.pdf. The FTC also enforces the antitrust laws to protect consumers of funeral services from anticompetitive conduct by funeral service and merchandise suppliers. *See, e.g.*, *Service Corporation Int’l*, Docket No. C-4423 (Consent Order, Dec. 23, 2013), <https://www.ftc.gov/sites/default/files/documents/cases/131223scido.pdf> (requiring Service Corporation International to sell 53 funeral homes and 38 cemeteries to resolve competition issues arising from its proposed \$1.4 billion acquisition of Stewart Enterprises, Inc.).

⁸ Fed. Trade Comm., Trade Regulation Rule, Funeral Industry Practices, *supra* note 4, 42267–69, 81 (Sept. 24, 1982).

⁹ *Id.* at 42261. The Rule specifically requires funeral service providers to offer consumers “[a] separate price for an immediate burial where the purchaser provides the casket.” 16 C.F.R. § 453.2(b)(4)(D)(1).

¹⁰ Fed. Trade Comm., Funeral Industry Practices Trade Regulation Rule, 59 Fed. Reg. 1592, 1604 (Jan. 11, 1994).

¹¹ *Id.* at 1593, 1599 (Jan. 11, 1994). *See also id.* at 1599 n.63 (citing evidence of the paucity of third-party provision of caskets prior to adoption of the Rule).

¹² *Id.* at 1593, 1604 (Jan. 11, 1994). *See* 16 C.F.R. § 453.4(b)(1)(ii).

¹³ *Penn. Funeral Dirs. Ass’n v. FTC*, 41 F.3d 81, 84 (3d Cir. 1994).

¹⁴ *Id.* (footnote omitted).

In a 2002 *amicus curiae* brief filed in a lawsuit challenging Oklahoma’s FLSA, the FTC noted that “[a] principal intention and effect of the Funeral Rule is to permit consumers to purchase caskets and other funeral merchandise from third parties who are not funeral directors.”¹⁵ The FTC explained:

Caskets are typically the most expensive component of traditional funeral services sold by funeral homes. Evidence suggests that third-party casket sellers typically charge significantly lower prices than do funeral homes for comparable caskets. Moreover, third-party casket sellers can benefit consumers by expanding the range of casket choices available in a market along additional dimensions. ...

Other things being equal, lower prices and more choices benefit consumers; equivalently, higher prices and fewer choices harm consumers.¹⁶

By contrast, the FTC expressed concern that “the FLSA’s requirements limit consumers’ choice of funeral merchandise providers, thereby insulating the funeral industry in Oklahoma from competition that could lower casket prices or provide other consumer benefits.”¹⁷

Thus, the Rule’s history and the FTC’s consistent advocacy affirm that the Rule is designed to benefit consumers by enabling third parties other than funeral services providers to supply caskets, urns, and other funeral merchandise. I attach for your and your colleagues’ review the current version of the above-referenced [Funeral Rule](#), statements of basis and purpose explaining the adoption of the initial rule in 1982 and the amendments that the FTC adopted in 1994, the FTC’s [Memorandum of Law of Amicus Curiae the Federal Trade Commission in Powers v. Harris](#), and the FTC’s [Amicus Curiae Brief on Behalf of the United States Federal Trade Commission in Support of Neither Party in St. Joseph Abbey v. Castille](#).¹⁸

I hope that the FTC’s research, analyses, and findings are valuable as you consider SB 559. Please do not hesitate to contact the FTC’s Office of Policy Planning if we can be of further assistance.

Sincerely,

Clarke Edwards

Clarke Edwards
Acting Director
Office of Policy Planning

Attachments

¹⁵ Memorandum of Law of Amicus Curiae the Federal Trade Commission at 17, *Powers v. Harris*, No. Civ.-01-445-F, 2002 U.S. Dist. LEXIS 26939 (W.D. Okla. Dec. 12, 2002), *aff’d* by 379 F.3d 1208 (10th Cir. 2004).

¹⁶ *Id.* at 18–19 (footnotes omitted).

¹⁷ *Id.* at 18.

¹⁸ In *St. Joseph Abbey v. Castille*, the FTC filed an amicus brief describing the Funeral Rule in litigation relating to Louisiana’s regulation of funeral services and merchandise. Amicus Curiae Brief on Behalf of the United States Federal Trade Commission in Support of Neither Party, 712 F.3d 215 (5th Cir. 2013) (No. 11-30756).