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HB 323 — Bad for consumers, bad for business

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~A a nonprofit, charitable federation of 110 funeral information societies with 400,000 members~

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As the director of the nation's only nonprofit watchdog group protecting consumers' rights to choose meaningful, dignified, and affordable funerals, I respectfully urge the Montana Legislature to abandon **HB 323**. As someone who has critiqued funeral bills nationwide, **HB 323** is one of the most anti-consumer, anti-free enterprise pieces of legislation I have ever seen. The bill will shut down low-cost competition in the funeral business and preserve a cartel of established funeral homes. This will strip Montanans of choice in funerals and cremations, and insulate the funeral market from meaningful competition. The bill also rides roughshod over the Constitutional and long-established Common Law rights of citizens to care for their dead as they see fit.

HB 323:

- Sets up a convoluted scheme to determine who has the right to make disposition arrangements and forces consumers to prepay a funeral home in exchange for the right to control their own future funerals. Twenty-nine other states have abandoned this model in favor of sensible rules.
- Conflicts with current regulations allowing consumers and their representatives to change prepaid funeral plans if circumstances change.
- Makes it illegal for families to care for their own dead at home, privately, and gives funeral businesses a legal right to the custody of a family's dead loved ones.
- Will put emerging low-cost funeral homes and free-standing crematoria out of business by making it illegal for them to remove dead bodies or perform other activities necessary to conduct their business and serve the public.
- Flatly contradicts citizens' First Amendment rights to free speech by making it illegal to communicate about **anything** to do with funeral or memorial services unless one holds a mortician's license.
- Would make it illegal for clergy or family members to organize or preside over funeral ceremonies or memorial services without a license.
- Gives the Montana Board of Funeral Service dominion over the private activities of citizens and clergy **far exceeding** the authority granted regulatory boards by Montana statute.

I suspect the sponsors of **HB 323** are unaware of the disastrous effects this bill would have. Undoubtedly, the funeral industry members who proposed it mislead legislators into believing it was necessary to protect the public. Nothing could be further from the truth. No provisions in HB 323 will serve any public protection purpose. It is understandable that legislators unfamiliar with the funeral industry and the history of funeral law would turn to those who hold themselves out as experts: the industry itself. This gives lawmakers a distorted perspective, however, from a group with a vested interest in protecting its own interests. As an expert in funeral law who has fought similar bills in

Tennessee, Wisconsin, and Kentucky, I can demonstrate this type of legislation is a reaction by the entrenched funeral industry to stave off competition as fewer consumers are willing to spend \$10,000 to bury their dead. As the cremation rate has risen nationwide, funeral homes that can't compete are trying to use the law as a cudgel against honest competition, and they're sacrificing the rights of citizens and consumers in the process.

Funeral Consumers Alliance has considerable experience working with legislators and honest industry members to draft legislation that adequately protects consumers and limits unnecessary liability for the funeral industry. We would be delighted to assist the Montana Legislature in doing so. Should **HB 323** move forward unamended, however, we are prepared to lobby publicly and loudly against this bill by alerting the media, AARP, and law firms that successfully litigate against such protectionist measures. **HB 323** is fundamentally unfair and will punish families and honest businesspeople while driving up the cost of dying in Montana.

I will follow up this summary with a line-by-line analysis of the bill its effects on consumers, and its relation to existing Montana statutes and regulations. In that analysis, I will include suggestions on improving its provisions by drawing on language from other states.

I look forward to working with lawmakers interested in making Montana funeral law work for everyone.

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And on behalf of the Five Valleys Memorial Society, a nonprofit, volunteer-run affiliate of the Funeral Consumers Alliance based in Missoula.