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Eastern Kentucky University

The Kentucky Way of Death:
A History of the Development of Mortuary Law in Kentucky

Honors Thesis

Submitted

In Partial Fulfillment

of the

Requirements of HON 420

Spring 2017

By

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The Kentucky Way of Death:
A History of the Development of Mortuary Law in Kentucky

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Mortuary law has been a field of law in the Commonwealth of Kentucky that has been vague, inadequate, and non-reflective of changes within the industry since its outset. The primary focus of this paper is on the specific Kentucky Revised Statutes governing the requirements and qualifications for licensure as an embalmer or funeral director, the potential sanctions for violations of the statutes, and eligible penalties that may be issued; and how these elements have developed over time. Kentucky mortuary law has consistently been outdated since the first laws were written. This research aims to make the complex topic of mortuary law more easily understandable by emphasizing the needs for change and how a lack of legislative attention throughout the 20th and 21st Centuries has resulted in several violations and court cases involving components of Kentucky mortuary law. This research details the effects of modifications to statutory laws, appellate court cases, and regulations from federal administrative agencies. The field of mortuary law is pertinent and will affect everyone at some point in their lifetime; this paper addresses how the law's inadequacy has and will continue to impact the funeral industry. Concluding this paper is an analysis of the current state of mortuary law in the Commonwealth of Kentucky to ultimately show that the statutory laws regarding the practice of licensed embalmers and funeral directors is vague, inadequate, and has not been updated to reflect changes in the industry.

Keywords and Phrases: Mortuary Law, Kentucky, Embalmers, Funeral Directors, Funeral, Kentucky Revised Statutes

Table of Contents

Acknowledgments.....	iv
Introduction.....	1
Funeral Service in America	3
What is Mortuary Law?	5
Beginnings of Kentucky Mortuary Law	8
National Influences, Growing Criticism, and Legal Expansion	13
Kentucky Statute Recodification of 1942	16
American Funerals: Rising Costs and Rising Resentment	19
American Funeral Service in the 1960s	21
The Federal Trade Commission Meets Funeral Service	26
The Funeral Rule	29
The Contemporary Authority on Kentucky Embalming and Funeral Directing	35
Involvement by the Courts	39
The Current Status of the Law	40
Recent Developments in Kentucky Mortuary Law	42
Future Issues	44
Conclusion	45
Bibliography	47
Appendices	51
Appendix A: Required FTC Funeral Rule Disclosures	51
Appendix B: Funeral Planning Declaration Document	53

List of Figures

Figure 1: Costs of Living and Dying	20
Figure 2: Advertisement for Burial Shoes	22

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Introduction

Death is an inevitable facet of life. Each person will not reach his or her demise, but will likely be faced with arranging the funeral of a loved one at some point in his or her lifetime. Since mortality is inevitable and many encounter deaths annually, each of the United States have adopted a series of laws, rules, and regulations that govern the practices of funeral service professionals and protect both professionals and consumers. Unfortunately for residents of the Commonwealth of Kentucky, these laws are vaguely written, outdated, and have resulted in several issues and have prompted multiple appellate court cases due to their inadequacy.

Classic American novelist Mark Twain is credited with saying, “When the end of the world comes, I want to be in Kentucky, because everything there happens 20 years after it happens anywhere else.” This statement is certainly applicable for the development of mortuary law in Kentucky as it has been plagued by legislative ignorance for decades at a time and many revisions have not sufficiently addressed problems existing in the law nor are they reflective of modern innovations within the industry. In a state that is known for famous pioneers and trailblazing expeditions, Kentucky has unfortunately remained 10 to 20 years behind other states in the creation and revisions to statutory mortuary law throughout its history.

The laws that govern the occupation of funeral directors and embalmers are one component of a large field of law that pertains to the death and disposition of humans – mortuary law. The numerous subfields within the purview of mortuary law include, but are not limited to laws pertaining to the proper care, preparation, and disposition of bodies; consumer protection including pricing equality and required disclosures; rights

and authorities of relatives to control estates; torts; probate, testacy, and intestacy; and the qualifications and requirements for licensure by funeral service professionals. Mortuary law has many common themes nationally and is comprised of several federal administrative rulings as well; however, each state has the constitutional authority to draft its own laws on the death and disposition of deceased individuals and the conduct of embalmers and funeral directors. Because the field of mortuary law is so broad, many people, including industry professionals and consumers, do not fully understand the breadth and depth of the law. The information within the field of mortuary law is pertinent, though, as it applies to everyone at some point in their lives.

The breadth of the law and lack of comprehension thereof combined with the little amount of attention mortuary law has been given throughout Kentucky's history can explain the dismal, and even frightening, current state of these laws in the Commonwealth. A bereaved individual mourning the recent death of a loved one would likely find no solace whatsoever in the fact that most laws in Kentucky governing embalming and funeral directing have not been revised in nearly 20 years. Despite its relevance to every individual, Kentucky mortuary law has long been behind the times. In most cases, decades passed between each revision of these laws. In that time, problems have arisen from the lack of adequate legal provisions governing the occupation.

Extensive research has constructed a historical perspective of certain aspects of mortuary law in the Commonwealth of Kentucky and how they have developed since their enactment. This research focuses specifically the chapter outlining the qualifications, requirements, and sanctions for licensed funeral service professionals. Embalmers and funeral directors in Kentucky are much like most other professions in

that they have a chapter of the Kentucky Revised Statutes devoted to the trade. Since mortuary law is a complex concept, this research aims to make the topic more easily understandable by emphasizing the needs for change and how those issues have impacted and continue to impact the funeral industry. Furthermore, this research will analyze the current state of mortuary law in the Commonwealth of Kentucky to ultimately show that the statutory laws regarding the practice of licensed embalmers and funeral directors is vague, inadequate, and has not been updated to reflect changes in the industry.

Funeral Service in America

Funeral rituals and practices have long preceded the inception of the United States of America; people have mourned the loss of their loved ones since the beginning of time. However, funeral services as they are currently known in the United States first came to be during the American Civil War, when soldiers were fatally injured in battle and were embalmed and transported for burial in their hometowns, which may have been hundreds of miles away. Cases such as these were some of the first instances that used modern embalming techniques to preserve the body for funeral services and burial. The process of embalming as it is known today was pioneered by Dr. Thomas Holmes, who is revered as the Father of Embalming.¹

Shortly thereafter, in the wake of the Civil War, modern embalming strategies continued to be developed and were expanded to the general populace. When it became commonplace to incorporate the embalming techniques of arterial injections of chemicals and fluids as part of funeral ceremonies, states began enacting legislation that explicitly

¹ Mary Roach, *Stiff: The Curious Lives of Human Cadavers* (New York: W. W. Norton & Company, 2004), 79.

detailed the qualifications of embalmers and the requirements of the early funeral providers. Previously, preparation of the body was rudimentary and focused primarily on setting the features of the decedent. This included the closure of orifices like the mouth and eyes, but also entailed the cleansing and dressing of the body. Once modern embalming techniques were introduced, embalmers began injecting preservative chemicals into corpses in a more clinical procedure.

Nationwide, most funeral service establishments had humble beginnings as carpenters and cabinetmakers who expanded their business into making caskets and coffins. As these carpenters began making more burial containers than cabinets or furniture, they began using parlors of their businesses for funerals and eventually became undertakers, a term which has since been replaced colloquially with funeral directors.

The industry gradually became more and more professionalized, and in the early decades of the 20th Century, funeral homes had become more established and common nationally. As these businesses were incorporating and devoting their practice solely to death-care, more legislation was passed nationwide governing regulations and requirements of the funeral establishments and people employed therein. It was during this same era that cremation was accepted as a proper and dignified mode of disposition. However, in many regions of the United States there is still a hesitance to choose cremation as an alternative to burial. In other parts of the country, though, cremation is the preferred method of disposition and continues to grow in popularity among Americans today. For many decades, funeral service practices have remained traditional; many families opt for standard funeral services which include a visitation and funeral, and are followed by burial. Since the late 20th Century, there has been an increased

interest in green burials, or the burial of a body without any preservation using only completely biodegradable containers and clothing. The funeral service industry is ever evolving, with frequent, new innovations that exhibit how funerals have transformed since the days of Dr. Holmes' embalming during the Civil War. The numerous changes have necessitated amendments to the laws regarding the industry to be updated as well, all of which comprises the field of mortuary law.

What is Mortuary Law?

Just as the industry of funeral service is continually changing, the field of mortuary law is also fluid. As the American funeral service industry has expanded since the days of the Civil War, the concepts of mortuary law have changed as well. In an early textbook on the topic, the author wrote of the importance of understanding mortuary law for a number of reasons, including the increasing population and the inflating prices of funeral goods and services.² One hundred nine years later, in another mortuary law textbook, author T. Scott Gilligan prefaced his text with a note that reiterated the importance of understanding the law due to fast-paced changes of the death care industry, especially in the latter portion of the 20th Century.³

It can be difficult to fully comprehend all that mortuary law entails. It has been defined as being “that distinct branch of law which treats of the rules of the conduct and action governing the mortician in his legal relation... [and] is specifically the study...which peculiarly relate to matters growing out of and concerned with the disposal

² Sidney Perley, *Mortuary Law* (Boston: George B. Reed, 1896), iii.

³ T. Scott Gilligan and Thomas F. H. Stueve, *Mortuary Law*, 10th ed. (Cincinnati: The Cincinnati Foundation for Mortuary Education, 2005), v.

of the dead.”⁴ Succinctly, mortuary law is the branch of law that protects funeral service professionals, funeral consumers, and the deceased from the time of death through funeral services to the disposition of the body.

In addition to understanding what mortuary law means, it is important to also know from where the law is derived. The sources of law are different in each state since each governs differently; however, most mortuary law nationwide comes from statutory and case law from state legislatures and courts.⁵ Additionally, federal regulation from administrative agencies has become an important source of mortuary law as well, especially since the 1980s.⁶

Since mortuary law pertains to any and all law related to human death, it undoubtedly covers a multitude of different topics. Early texts noted that mortuary law first began at an individual’s final illness, the one that would ultimately lead to his or her death.⁷ Since then, Gilligan and Stueve have determined that mortuary law can initiate long before a person’s final illness, especially if an individual had prearranged his or her funeral.⁸ Although the scope of early mortuary law texts was limited in comparison to contemporary literature, it was still broad. Perley’s text on the subfield of law from 1896 covered events from the last sickness to the disposition of the body to any exhumation of the body, as well as transportation of bodies, funeral expenses, gravestones and monuments, and cemeteries.⁹ In texts published over a century later, many of these same

⁴ Thomas F. H. Stueve, *Mortuary Law*, 8th ed. (Cincinnati: The Cincinnati Foundation for Mortuary Education, 1988), 2.

⁵ Gilligan and Stueve, *Mortuary Law*, 1-3.

⁶ *Ibid.*, 3

⁷ Perley, *Mortuary Law*, 1-3.

⁸ Gilligan and Stueve, *Mortuary Law*, 57-64

⁹ Perley, *Mortuary Law*, v-vi.

concepts were still included as important components of mortuary law in the contemporary era; however, many were also added, particularly the business regulations that are associated with the funeral industry. Many of the recent mortuary law regulations have been handed down from federal administrative agencies, like: protecting employees' health from the Occupational Safety and Health Act (OSHA); protecting employee's positions with wage and hour laws; civil rights laws; protecting consumers from illegal collections with the Truth-in-Lending Act, Magnuson-Moss Warranty Act, and Gramm-Leach-Bliley Act. Additionally, consumers are protected from unfair pricing and illegal requirements by the Federal Trade Commission Funeral Rule, which is likely the most significant regulation regarding funeral service in American history.¹⁰

Since the field of mortuary law is so broad, this research has focused primarily on the statutory and case law regarding funeral service in the Commonwealth of Kentucky throughout its history. This paper will provide a historical analysis of the development of the law from its beginnings in 1904 to the present, noting how similar the law is to the first laws regarding embalming and undertaking that were enacted by the Kentucky General Assembly 113 years ago. Key issues with the law throughout its history will be identified, noting how changes made in the past could have eliminated later problems. A look at the current and future state of mortuary law in Kentucky will conclude this paper, providing a substantive review of the development of mortuary law in Kentucky. This text is not merely a historical account of the law's development; throughout, the inadequacies and theme of legislative ignorance as is common in Kentucky mortuary law will be emphasized to note how these shortcomings have resulted in significant issues

¹⁰ Gilligan and Stueve, *Mortuary Law*, 62-122.

that could have been prevented if the law had been given the necessary attention it requires.

Beginnings of Kentucky Mortuary Law

The Kentucky State Board of Embalming was established by order of the Kentucky General Assembly during its regular session of 1904.¹¹ This was the first statutory law governing the qualifications and conduct of embalmers in the Commonwealth, which was passed twenty-two years after the National Funeral Directors' Association (NFDA) was established in 1882.¹² At the time of the development of the State Board of Embalming, Kentucky had already developed an association for funeral directors, known as the Funeral Directors' Association of Kentucky (FDAQ).¹³ From the outset of Kentucky's legislation in the field of mortuary law, it was decades behind over twenty other states who had already established licensing requirements for embalmers by 1900.¹⁴

When the Kentucky legislature determined it necessary to establish the State Board of Embalming, it was to “[define] the duties thereof, to provide for the better protection of life and health, and to prevent the spread of contagious diseases.”¹⁵ The act was also put in place to detail the requirements and qualifications for embalmers and to legally establish a penalty for violation of any of the statutes. The State Board of Embalming was established during a period when health treatment and practices were basic and slowly developing. Thus, it is interesting to note how important the health-related components of

¹¹ 1904 Ky. Acts Chapter 89, §§1-16

¹² James J. Farrell, *Inventing the American Way of Death, 1830-1920* (Philadelphia: Temple University Press, 1980), 146.

¹³ 1904 Ky. Acts Chapter 89, §2

¹⁴ Farrell, *Inventing the American Way of Death*, 152.

¹⁵ 1904 Ky. Acts Chapter 89.

embalming were to the legislators when the lawmakers voted to establish the state board to govern the practice of embalming.

Although the mortuary industry was becoming more professionalized nationwide, especially after the founding of the NFDA, the development of mortuary law provisions in Kentucky still came many years after similar structures were established in other states. According to Farrell, the modern funeral was developing professionally in four ways, specifically: “the care of the body, the container for the body, the places of the funeral, [and] funeral procedures.”¹⁶ As American funerals modernized and the industry became more professionalized, the practice of embalming also became more prevalent. As the industry modernized, decedents were being laid to rest in manufactured caskets instead of simple handmade coffins, funerals began taking place in funeral establishments instead of at family homes, and the funeral ceremonies became more focused for those bereaved. The growing professionalism and gradual implementation of laws aided in the legitimization of the industry as well.

The 89th chapter of the Kentucky Statutes in 1904, made effective on March 22 of that year, were comprised of sixteen sections pertaining to the practice of embalming and establishment of a state board governing the profession. These preliminary statutes featured seven sections that dealt with the development of the state governing body for funeral service. The statutes required that the board be comprised of five individuals, all of whom were embalmers and had extensive experience in the funeral industry; that the board must meet at least once annually; and gave the board the authority to determine the

¹⁶ Farrell, *Inventing the American Way of Death, 1830-1920*, 146.

standard requirements of those wishing to serve as licensed embalmers in the Commonwealth.¹⁷

The remainder of the statutes dealt with the licensing of professional embalmers and the qualifications they were required to possess for eligibility to practice their trade in the Commonwealth. As of September 1, 1904, all practicing embalmers in the Commonwealth of Kentucky were required to be licensed.¹⁸ The licensing requirements were also outlined in the chapter. To be eligible for an embalmers license according to statutes, individuals must have been twenty-one years old, had practiced embalming or served as an embalmer's apprentice for at least three years, and had passed an examination by members of the board to ensure the applicant had knowledge of the science and techniques of embalming.¹⁹ Embalmers were also required to be knowledgeable of proper methods to sanitize bodies to prevent the spread of contagious diseases and be of "good moral character." One of the final provisions of the 89th chapter was to create penalties for violations of the statutes; according to the fifteenth section, any person in violation would be subject to a misdemeanor and be required to pay a fine of not less than \$50 nor more than \$100.²⁰

Compared to the requirements of an embalmer in Illinois in 1920, the Kentucky requirements were quite involved in some aspects but lacked in others. Illinois law mandated that embalmers study at a mortuary institution for six months followed by a one-year apprenticeship and an examination.²¹ Embalmers in Kentucky were required to

¹⁷ 1904 Ky. Acts Chapter 89, §§1-6, 12.

¹⁸ *Ibid.*, §13.

¹⁹ *Ibid.*, §§7-8.

²⁰ 1904 Ky. Acts Chapter 89, §15

²¹ Farrell, *Inventing the American Way of Death*, 152-3.

serve a longer apprenticeship, but were not required by law to have any formal education in mortuary science. This exemplifies the inadequate nature of Kentucky law, even in its earliest forms. Kentucky would eventually revise the law to require mortuary science education; however, it was not deemed necessary at the time even though other state legislatures had already passed laws requiring formalized mortuary science education.

The requirement that the embalmer applying for a license display the character of a moral person aligned closely with the early NFDA Code of Ethics from 1884. This code expected embalmers and funeral directors be fair, delicate, well-mannered, well-tempered, well-dressed, and well-groomed.²²

Although the requirements for licensure for Kentucky embalmers came several years after that of other states and multiple decades after the establishment of the NFDA, the 1904 statutory requirements were still somewhat restrictive. However, despite the detailed requirements, the scope of this legislation was limited and somewhat underdeveloped. When the state board was created, it only governed embalmers and did not offer licensing for funeral directors, another integral position within the mortuary industry. This was not uncommon though, as many states did not provide any legislation for funeral directors, then referred to as undertakers.²³ An early trade publication reiterated this by stating that American undertakers did not receive enough legislative mention to be considered a “vital profession.”²⁴ While a lack of legislation for funeral directors in that era was the norm, if more had been made in the earliest days of mortuary

²² *Ibid.*, 151-2.

²³ Farrell, *Inventing the American Way of Death*, 153.

²⁴ “Legislative Lines,” *Embalmers Monthly*, June 1892, 1, quoted in James J. Farrell, *Inventing the American Way of Death*, 265.

law legislation, problems that arose later including unethical practices among funeral service practitioners may have been prevented.

It was not until ten years later, in 1914, that the first revisions were made to the Kentucky statutes governing the State Board of Embalming. House Bill 109 was passed on March 22, 1914, and amended the law to include statutory coverage for undertakers.²⁵ This revision amended several of the sections and subsections to broaden the scope of the law to those practicing as undertakers and made clear the requirements and qualifications for those individuals.

Effective July 1, 1914, all individuals practicing in the Commonwealth of Kentucky as undertakers would need to be licensed to practice their trade. This required candidates for an undertaker's license to submit an application, be at least 21 years of age, have practiced or been the assistant to an undertaker for at least two years, and be of good moral character."²⁶ In addition to the qualifications for licensure, the application fee was raised by five dollars with the 1914 amendment to ten dollars (\$10). It was not until 1924 when the next amendment to the chapter was made, increasing the application fee to twenty-five dollars (\$25).²⁷ With this revision, the practice of undertaking was legally acknowledged and protected; furthermore, undertakers were eligible for legal recourse if found in violation of the civil laws regarding the practice of embalming and undertaking. The 1914 revision also increased the sanctions for embalmers and undertakers found in violation to a minimum fine of one hundred dollars (\$100).²⁸ Including undertakers in

²⁵1914 Ky. Acts Chapter 88, §§1-2.

²⁶Ibid., §1(5).

²⁷1924 Ky. Acts Chapter 102.

²⁸1914 Ky. Acts Chapter 88, §1(10).

this statutory law was a major revision which would protect both the professionals and consumers alike.

Undertakers' positions were, for the first time in Kentucky, legitimized by the legislators, which also increased the professionalism of the industry. As the practice of funeral service was transforming, its practitioners were acknowledged with legitimacy and respect in their communities. Additionally, consumers were protected in that those wanting to practice as undertakers must have obtained some qualifications and would be knowledgeable and moral individuals. While this component would have likely been best included in the original statutes from 1904, this revision was extremely important to help ensure that deceased individuals would be cared for by professionals with utmost respect and mourning families would be protected from unprofessional or unethical business practices.

National Influences, Growing Criticism, and Legal Expansion

Following the 1924 revision, the next major revisions would not come for nearly two decades when Kentucky statutes were codified to the current form in 1942. This unfortunately continued the still-present issue of the law being outdated to changes within the industry.

Years prior, in other places around the nation, funeral service practitioners were introducing alternative means of disposition in response to the rising costs of the newly-professionalized industry. As early as 1876, cremation became an accepted and ethical means of disposition of a deceased human body when the first crematory in America was

built.²⁹ Later, in New York in 1898, it was realized that there could be a \$95 cost savings by choosing cremation over burial; this was years before Kentucky had even enacted its State Board of Embalming.³⁰ However, it was not until the 1920s that cremation became a viable alternative to burial in the eyes of the general public; even then it made up less than one percent of total dispositions in 1920.³¹

The differentiation between costs of burial and cremation initiated growing criticism among many Americans toward the funeral industry. Many individuals nationwide felt that there was more than what met the eye regarding the vast differences in prices of burial and cremation and continually rising costs of funeral services. Many became disgruntled and thought of these practices as manipulative and unethical. As this view became more popular, the Bureau of Labor Statistics intervened in 1928 and iterated the “need for reform ... as well as a different attitude among the people at large for the ostentation involved in needlessly high-priced funerals.”³² This statement came in response to early critics of funeral service in America, especially towards the earliest discussions of the high-priced American funeral. It is worthwhile to mention that the advocacy by the Bureau of Labor Statistics in this case was somewhat unorthodox as this agency primarily focuses on researching and analyzing labor and employment trends. The Bureau of Labor Statistics’ statement did not have any significant short-term effects, but many individuals nationwide began to view the funeral service industry negatively and began taking action on a community-level.

²⁹ Farrell, *Inventing the American Way of Death*, 164.

³⁰ *Ibid.*, 165.

³¹ *Ibid.*, 164.

³² Steven W. Kopp and Elyria Kemp, “The Death Care Industry: A Review of Regulatory and Consumer Issues,” *Journal of Consumer Affairs* 41, no. 2 (2007): 155. Academic Search Complete (0902704).

Many concerned citizens nationally took the Bureau of Labor Statistics call for reform to heart and began thinking forwardly about their funerals. In 1939, in Seattle, Washington, the first memorial society was established with the goal of prearranging funerals at lower costs due to critical perceptions of funeral service professionals' practices in the business.³³ Many people who had membership in these memorial societies believed that funeral directors were salespeople focused only on profits and marketed elaborate services and merchandise to take advantage of the bereaved. As more people became dissatisfied with rising prices of funeral services, more memorial societies began increasing in number nationally. They were formed with the intent that cooperative buying power by a number of member families would decrease funeral costs; however, it was primarily only the more sophisticated people in urban areas who joined.³⁴ It comes as no surprise that the only memorial society established in Kentucky was not organized until 1963, 24 years after the first one was established in Washington.³⁵ This association, known as the Greater Louisville Memorial Society had only 26 families as members.³⁶ The creation of these associations nation-wide was integral to the growing criticism of funeral service in America because, as a group, their criticisms were amplified and these groups allowed the individuals an avenue by which they could make a difference. These critical opinions began as early as the 1920s in some urban areas, but became a hot-button issue nationwide by the 1960s.

³³ Ibid., 156; Rebecca A. Cohen, "The FTC Assault on the Cost of Dying," *Business and Society Review* no. 27 (1978): 51. Business Search Complete (4647720).

³⁴ Kopp and Kemp, "The Death Care Industry," 156; Jessica Mitford, *The American Way of Death* (Greenwich, CT: Fawcett, 1964), 16.

³⁵ Mitford, *The American Way of Death*, 234.

³⁶ Ibid.

Kentucky Statute Recodification of 1942

In the interim, the Commonwealth of Kentucky made a major revision to its statutory framework in 1942 when the legislature underwent a process to recodify all existing law into the Kentucky Revised Statutes (KRS), the same format used today. As these laws were codified into the current form, the existing statutes in all areas of the law were analyzed to ensure that each statute was correctly labeled and aligned within the scope of each section appropriately. With this revision came the first major revisions to the chapter regarding embalming and funeral directing in nearly two decades. The chapter's title and name of the state board was changed to the State Board of Embalming and Funeral Directing of Kentucky. This modification exemplifies the continually increasing professionalism of the industry and importance of titles of licensed individuals as well. With this revision, now labeled under Chapter 316 of the Kentucky Revised Statutes, legislators expanded the licensing requirements for candidates of embalmers licenses. In addition to the aforementioned age, moral character, and apprenticeship requirements, those applying for an embalmer's license in the Commonwealth of Kentucky would be required to study mortuary science for at least 26 weeks at an institution acknowledged by the state board.³⁷

It would be at these institutions that embalming students would not only learn the modern techniques of embalming, but would also be educated on other practices regarding deceased human bodies, like disinfection and sanitation.³⁸ The addition of this requirement was long overdue as many other states had required embalmers to have

³⁷ KY. REV. STAT. ANN. §316.030(2) (Banks-Baldwin 1943).

³⁸ Ibid.

formal education in the science and techniques of embalming as early as 1920. This requirement was necessary but should have been in place multiple decades prior when other states began requiring their embalmers to obtain formalized mortuary education, as in the case of Illinois discussed earlier.

Additionally, the state legislature expanded the disciplinary actions and reasons for sanction of license holders in Kentucky. In prior versions, the law only outlined that licenses could be revoked for embalmers or undertakers found in violation of any provision of the chapter. With the 1942 amendment, new subsections were added to further protect both funeral service professionals and consumers. According to KRS 316.150, the licenses of funeral directors or embalmers could be suspended, revoked, not issued, or not renewed for a number of reasons. These sanctions could be issued if the license holder had been convicted of a felony, found in possession of chemicals and fluids by individuals not licensed to practice embalming, or had any financial involvement in securing business, whether by paying directly for services, soliciting in any way, or by offering free ambulance service, use of hearse, or grave digging.³⁹ Despite these expanded causes for disciplinary action, the penalties statute of this chapter still only pertained to the licensing requirement, where it identified that anyone doing work which required a license without one would be assessed a \$100 fine for each and every offense.⁴⁰ These provisions were seemingly enacted for the protection of the consumers, especially with regard to prohibiting the licensee from unfair business practices like payment of services for purposes of obtaining business.

³⁹ Ibid., §316.150.

⁴⁰ Ibid., §316.990.

These expanded statutory provisions, although long overdue, were still vague as they have always been. Therefore, these laws did not anticipate many things, including a number of issues that would come from the lack of depth of the law as it was written. Less than 20 years after the revision, a dispute that was taken to the Kentucky Court of Appeals serves as an example of the issues coming from the vagueness of the law. In 1960, the appellate court heard the case of Johnson v. Correll, where the appellee, Charles Correll, was an apprentice funeral director and was found guilty of solicitation and claiming to be a licensed funeral director when he was not.⁴¹ The State Board of Embalmers and Funeral Directors, the appellants, had previously found in a hearing that Correll was in violation and his apprenticeship was voided. This appellate case brought to light one major pitfall of the law in its then-current form; although the Board had the statutory right to suspend, revoke, not renew, or not reissue the license of a funeral director or embalmer, KRS 316.150 makes no mention of any right to cancel the registration of an apprentice properly registered by the State Board of Embalming and Funeral Directors. As such, the Court of Appeals agreed that the appellants did not have the statutory right to cancel the Correll's apprenticeship despite the allegations of his misconduct. The opinion, written by Judge Stewart, said, "The board here was authorized only to administer the law as written. It was not empowered to add to or subtract from the statute."⁴² It may be inferred that this court case would have necessitated the legislature to expand the statutory rights of the State Board to administer rulings to apprentices in violations as well in efforts to better protect consumers. Unsurprisingly and

⁴¹ Johnson v. Correll, 332 S.W.2d 843 (1960).

⁴² Ibid.

unfortunately, no changes were made to that effect to Kentucky law. It would be several decades before the law was expanded to cover the behaviors of apprentices as well.

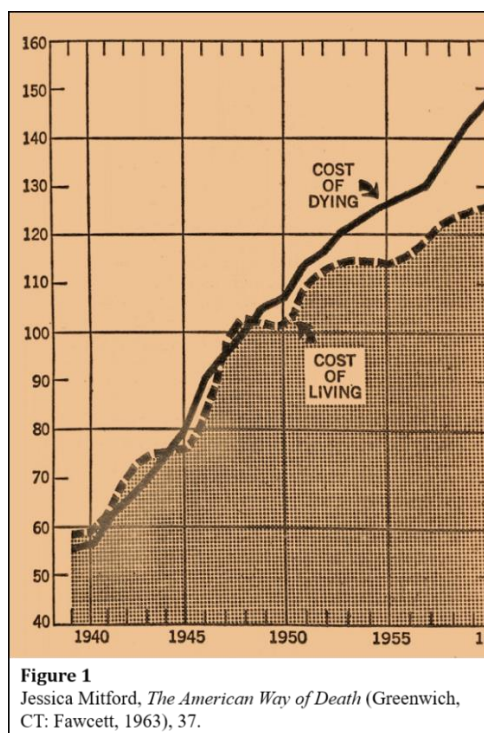
American Funerals: Rising Costs and Rising Resentment

As mentioned before, individuals became disenchanted with how expensive funeral services had become as early as the 1920s. This opinion promulgated across the nation in the 1930s and 1940s. Many individuals who viewed funeral service in America negatively said the entire process was excessive, lavish, and extravagant. With the presence of memorial societies, many experimented with more simplistic, basic services that were considerably less expensive. As early as the 1940s, people began studying the relationship between the prices and costs of funeral goods and services. Additionally, research noted the cost of dying had exceeded the cost of living as early as the 1940s, as shown in Figure 1.⁴³ This data shows that the cost of dying exceeded the average American cost of living before 1945, even though both the costs of living and dying have been at steady inclines from 1940 to 1960, and beyond. As early as 1949, the cost of dying again surpassed the cost of living, and has remained higher ever since. The measure by which the costs of living and dying are charted in Figure 1 is an index that places the combined cost of living and dying in the United States during the base period, from 1947-1949 as the value 100.⁴⁴ Since the base period, the costs of living and dying have steadily increased; however, the cost of dying, measured by the complete, total costs for all purchases and fees regarding the death of an individual, has increased at a higher

⁴³ Mitford, *The American Way of Death*, 37.

⁴⁴ Ibid.

rate than the cost of living, which is measured as the basic requirements for one to thrive.



Funeral costs in America have consistently increased and are among the most expensive purchases made by an individual during their lifetime. The funeral service is considered to be the third largest single expenditure an individual makes, following only the purchase of a home and automobile.⁴⁵ A new world record was set for funeral service costs in 1960 when Americans spent approximately \$1.6 billion on funeral services, averaging to \$942 for the funeral of each person who died that year.⁴⁶ Forty-two years later, in 2002, it was computed that the sales revenue for any company involved in

⁴⁵ Ruth Darmstadter, "Blocking the Death Blow to Funeral Regulation," *Business and Society Review* no. 44 (1983): 32. Business Search Complete (4644082); Consumers Union, *Funeral Service Regulation: SWRO Issue* (Austin: Consumers Union, 2004) quoted in Steven W. Kopp and Elyria Kemp, "Consumer Awareness of the Legal Obligations of Funeral Providers," *Journal of Consumer Affairs* 41, no. 1 (2007): 326. Academic Search Complete (26550159).

⁴⁶ Mitford, *The American Way of Death*, 31.

funeral service (including funeral homes, cemeteries, crematories, and others) amounted to more than \$25 billion.⁴⁷ By 2004, the National Funeral Directors Association determined that the average cost of a funeral was more than \$8,500, a figure approaching ten times the average cost of a funeral in 1960 – which was thought to be staggeringly expensive then.⁴⁸ The initial governmental investigations regarding this issue began in the 1960s to attempt to determine why these figures had been increasing exponentially for so long.

American Funeral Service in the 1960s

When most of the world was concerned with global tensions caused by nuclear scares, missile crises, and a presidential assassination, there was a faction of citizens that remained militantly concerned with the status and future of funeral service in America. At the forefront of this movement was Jessica Mitford, an English author who had been shocked at what she termed the extravagance of American funerals. This realization led to her investigation of the industry that uncovered some unethical and illegal practices by funeral service professionals – all of which would be emphasized in her 1963 bestselling work of non-fiction, *The American Way of Death*. According to Mitford, the American funeral was tainted with the perspective that a high standard of living necessitated a high standard of dying. In maintaining this perspective, she believed funeral directors unethically encouraged the sale of more expensive products and services, unnecessary

⁴⁷ Kopp and Kemp, “The Death Care Industry,” 151.

⁴⁸ Steven W. Kopp and Elyria Kemp, “Consumer Awareness of the Legal Obligations of Funeral Providers,” *Journal of Consumer Affairs* 41, no. 1 (2007): 326. Academic Search Complete (26550159).

products, and claimed that certain components of the services were legally required when in reality, they were not.⁴⁹

A major premise discussed by Mitford was the ignorance among the general population regarding aspects of mortuary law. She claimed that, exacerbating this issue, “funeral men foster these misconceptions...by coolly misstating the law to the funeral buyer.⁵⁰ Throughout her work, she discussed several particular examples of ethical dilemmas and manipulative practices of funeral service providers she encountered throughout her research.

In one example, Mitford discussed the marketing by funeral directors of the Fit-A-Fut shoes, a shoe designed specifically for burial. Popular in this era, burial shoes were marketed as an elegant shoe or slipper that would be a comfortable, eternal fit for the corpse, as shown in Figure 2.⁵¹ Thinking this product was completely preposterous, she ultimately claimed the shoes would have been a manipulative sale and had no purpose.⁵²



⁴⁹ Mitford, *The American Way of Death*, 37.

⁵⁰ *Ibid.*, 24.

⁵¹ Chris Quigley, “Burial Shoes,” *Quigley’s Cabinet*, May 31, 2009, <http://quigleyscabinet.blogspot.com/2009/05/burial-shoes.html>

⁵² Mitford, *The American Way of Death*, 46; Irene E. Leech and Richard T. Hull, “Funeral Industry, Unethical Practices,” in *Encyclopedia of Death and the Human Experience*, ed. Clifton D. Bryant and Dennis L. Peck (Los Angeles: SAGE, 2009), 479-80.

Other accounts she mentioned revolve around the coolly misstated law of funeral providers to manipulate funeral consumers into purchasing a product or service that was unnecessary. She said that several California funeral directors repeatedly told her it was illegal to cremate an “uncoffined” body; however, when researched, she determined this was not true.⁵³ Quite possibly the most significant unethical practice of funeral directors in this era was the prevalence of implied consent for embalming and funeral director’s blatant lies that embalming is required by law.⁵⁴

Paralleling Mitford’s work and providing additional evidence as to the extravagance of American funerals was Leroy Bowman, who, in his book *The American Funeral*, discussed the controversy of funeral costs. Bowman shed light on the variance of funeral costs by geographic location, cultural groups, socioeconomic status, and ethnicity and race.⁵⁵ He detailed that sometimes these variations occurred within a single firm.⁵⁶ The author provides an example of how the price ranges for merchandise and services in one specific firm varied significantly according to the economic level of the customer. This aligns with a personal conversation with a retired Kentucky funeral director and embalmer who once told a story of funeral homes in rural Kentucky and Tennessee having separate selection rooms for customers of different economic statuses within the community.⁵⁷ There was no legal prohibition of these separate selection rooms in Kentucky statute; however, that did not in any way make the existence thereof acceptable or ethical. This serves as another example of the inadequacy and vague nature of

⁵³ Ibid., 24-5.

⁵⁴ Mitford, *The American Way of Death*, 54-5, 66.

⁵⁵ LeRoy Bowman, *The American Funeral: A Study in Grief, Extravagance, and Sublimity* (Westport, CT: Greenwood, 1973), 42.

⁵⁶ Ibid., 42.

⁵⁷ Ibid., 43; Anonymous Kentucky-licensed Embalmer and Funeral Director, personal spoken dialogue.

Kentucky mortuary law. Eventually, the unethical business practices of funeral service practitioners began gaining attention by government officials nationwide.

It is uncertain whether these accounts of unethical business practices occurring within the funeral industry predicated the next revisions to the KRS Chapter 316 or if the changes just happened in the same timeframe; nonetheless, the 1960s brought about some significant, much-needed, and long-overdue changes to mortuary law in Kentucky.

The 1960 General Assembly of the Kentucky legislature voted to make several amendments within the purview of mortuary law. These revisions came nearly two decades after the last revisions, as has been the common trend among Kentucky legislative action regarding mortuary law. Among these amendments was the requirement that embalming students complete a one-year course of study at an accredited mortuary college, followed by a two-year apprenticeship.⁵⁸ The disciplinary action component of KRS 316 was also revised in 1960 to include the following additional provisions: licenses could be revoked, suspended, not-renewed, or not-issued on the grounds of conviction of a misdemeanor that resulted in imprisonment or a fine greater than \$500, for assisting applicants for funeral director's and/or embalmer's licenses by fraudulently misrepresenting some information regarding the apprentice and/or his or her work, and for operating a branch establishment without the management of a Kentucky-licensed embalmer and funeral director.⁵⁹ To better adjudicate disputes and violations, the penalties section was also amended as well. This expansion said that any unlicensed

⁵⁸ KY. REV. STAT. ANN. §316.030, 316.050 (1960) in State Board of Embalmers and Funeral Directors of Kentucky, *Laws, Rules, and Regulations of State Board of Embalming and Funeral Directors of Kentucky Governing Embalming and Funeral Directing* (Frankfort, KY: Commonwealth of Kentucky, 1971), 58-9.

⁵⁹ *Ibid.*, §316.150.

individual practicing as an embalmer or funeral director within the Commonwealth of Kentucky would be guilty of a misdemeanor and subject to a fine of \$500; furthermore, if the individual was operating an establishment without a license, each day that the business was open would be considered a separate offense.⁶⁰

Quite possibly, though, one of the most important statutory expansions in the field of mortuary law in the 1960s was the establishment of a state trust fund for prearranged funeral contracts, which was created in 1966.⁶¹ Once established, this would provide individuals the opportunity to deposit money into a safe, interest-bearing account known as the Funeral Funding Trust of Kentucky, monitored by the Funeral Directors Association of Kentucky for the purposes of funding their funeral services. The custody of these accounts is held by the state association to eliminate the threat of funeral homes accepting funds but failing to provide the services. The trusts are also maintained by the Funeral Directors Association of Kentucky to protect consumers' money in the event the funeral home dissolved; the accounts would continue to bear interest as a traditional savings account would. This trust fund is still in full force today and is one of the primary ways by which people can fund their prearranged funerals. Its establishment in 1966 is indicative of the extremely slow nature of revisions within Kentucky's mortuary law, since some states in other places nationally began offering prearrangements as early as the 1930s with the development of memorial societies. Despite the onslaught of controversy and increased discussion on funeral ethics, pricing, and laws, the

⁶⁰ Ibid., §316.990.

⁶¹ 1966 Ky. Acts Chapter 12.

Commonwealth continually suffered from being behind-the-times, a disease that has seemingly plagued the mortuary law in Kentucky for decades on end.

The Federal Trade Commission Meets Funeral Service

The growing discontentment and exploitation of unethical business practices catalyzed the implementation of what would likely be the most significant change in American mortuary law ever. In the heat of the controversies regarding the extravagance and high costs of dying in America, the United States Senate had its first hearing on the matter in the Subcommittee on Antitrust and Monopoly in 1964.⁶² Despite the catalyzing events and works of scholarship, federal administrative agencies seem to operate on the same time schedule as legislatures within the Commonwealth of Kentucky, especially when it comes to regulating funeral service.

It was not until nine years later, in 1973, that the Federal Trade Commission (FTC) began an investigation on the variation in funeral pricing. This investigation ultimately concluded that, “there were ‘many serious abuses of consumers by large numbers of the nation’s 22,000 funeral homes and... [there is] an urgent need...for remedial action’ at the federal level.”⁶³ Albeit urgent, this remedial action could not have come quickly enough; and, as it may be inferred, it did not. The Federal Trade Commission continued its investigation; however, it would still be many years until any ruling was put into effect. Throughout the investigation, opinions from both consumers, state governments,

⁶² Kopp and Kemp, “The Death Care Industry,” 156; Kopp and Kemp, “Consumer Awareness,” 327.

⁶³ Federal Trade Commission, *Funeral Industry Practices: Proposed Trade Regulation Rule and Staff Memorandum* (Washington, D.C.: Bureau of Consumer Protection, 1975), quoted in Kopp and Kemp, “The Death Care Industry, 157.

and funeral industry professionals, some in favor and others in opposition to the possibility of enacting a rule came in droves to the FTC.⁶⁴

Among these opinions were some that claimed consumers were manipulated by funeral directors who failed to mention the availability of less-expensive alternatives. On the contrary, funeral service practitioners felt that the implementation of an oversight rule would practically be a death sentence to their industry because of the perceived high costs of implementation.⁶⁵ Adding to the need for federal intervention was the claim that state laws were inadequate; this affirms that the Commonwealth of Kentucky was not the only state to have struggled with keeping their funeral laws up-to-date and reflective of the current issues in the industry. Darmstadter offered several statistics which corroborated the lack of effectiveness of state laws (as of 1980), which are as follows:

- “Only two states prohibit misrepresentation of the preservative and protective value of merchandise.
- Only eight states prohibit requiring a casket for cremation.
- Only eight states specifically prohibit misrepresentation of legal and cemetery requirements.
- Only twelve states require an itemized written agreement—which need not be presented until after the arrangements have been decided upon. Only five states require any price information to be given either by phone or personally prior to sale of services.
- Twelve states and the District of Columbia have no regulations at all governing the business practices of funeral home operators.”⁶⁶

It is no surprise that Kentucky was among the twelve states without any regulation of the business practices of funeral home operators whatsoever; however, in the case of legal inadequacy, they were not alone.

⁶⁴ Kopp and Kemp, “The Death Care Industry,” 157.

⁶⁵ Darmstadter, “Blocking the Death Blow,” 33-5.

⁶⁶ *Ibid.*, 33.

Eighteen years after the first Senate hearing, and nine years after the initial FTC investigation, the Federal Trade Commission issued its Funeral Industry Practices Rule, commonly referred to as the Funeral Rule, on September 24, 1982.⁶⁷ The implementation of this administrative ruling was intended to protect the consumer from exploitation by regulating several business-related components of the funeral industry's relationships with its consumers. These regulations evolved from the perceived amount of grief sustained, limited amount of time, and the lack of knowledge of funeral services and processes people have when making funeral arrangements. Given these particular issues, consumers would be unable to make informed decisions without explicitly defined disclosures to better explain the required and forbidden practices of funeral service professionals.⁶⁸ The Funeral Rule was made to serve as this explanation and to protect the consumers of funeral goods and services. Though the Funeral Rule was officially logged in the Federal Register as 16 CFR Part 453 in 1982; it would not go into effect until 1984.⁶⁹

It is interesting to note the conclusions of a study completed by Schwarz, Jolson, and Lee less than two years after the first version of the Funeral Rule went into effect. In an effort to determine how successful the administrative ruling had been in achieving its purpose, the researchers noted that they could not determine the number of manipulative, “abusive marketing activities” that led to the creation of this rule.⁷⁰ Furthermore,

⁶⁷ Kopp and Kemp, “The Death Care Industry,” 157; Martin L. Schwartz, Marvin A. Jolson, and Ronald H. Lee, “The Marketing of Funeral Service: Past, Present, and Future,” *Business Horizons* 29, no. 2 (1986): 40. Academic Search Complete (4528678).

⁶⁸ Kopp and Kemp, “Consumer Awareness,” 327; Schwartz, Jolson, and Lee, “The Marketing of Funeral Service,” 40.

⁶⁹ Kopp and Kemp, “The Death Care Industry,” 157; Federal Trade Commission, *16 CFR 453: Funeral Industry Practices Rule* (Washington, D.C.: Federal Trade Commission, 1999), 438-445.

⁷⁰ Schwartz, Jolson, and Lee, “The Marketing of Funeral Service,” 42.

Schwarz, Jolson, and Lee referenced a study by the Federal Funeral Directors Association that concluded that 98% of individuals expressed satisfaction with their funeral transactions both before and after the Funeral Rule was put into place.⁷¹ Another facet of their study sought the reception of the Funeral Rule by funeral service practitioners. From this, the Schwarz, Jolson, and Lee determined that 17% of funeral directors surveyed continued to have a negative reaction to the rule, while only 8% expressed a positive reaction.⁷² Of the funeral directors surveyed, 95% of respondents claimed to have an extensive and complete understanding of the Funeral Rule.⁷³ This study begs the question: if nearly 95% of funeral service professionals confidently claimed to be knowledgeable of the provisions of the Funeral Rule, why have compliance issues persisted despite the publication of materials for industry professionals to better explain the rule? Attempting to answer this question is outside the scope of this study; however, it is worth noting that, due to the magnitude and importance of the Funeral Rule, it is complex and can be difficult to understand, even to some industry professionals.

The Funeral Rule

The Funeral Rule was a monumental ruling by the Federal Trade Commission and was designed to protect consumers from unlawful and unethical practices of funeral directors and embalmers nationwide. Specifically, according to Schwartz, Jolson, and Lee, the ruling provides regulations for “full disclosure of prices, legal and processing requirements, and incidental charges; elimination of bundling and tie-in pricing so that purchasers can choose only those services and products they desire; and control of

⁷¹ Ibid.

⁷² Ibid., 43.

⁷³ Ibid.

misrepresentations.”⁷⁴ From the time the Funeral Rule went into effect on April 30, 1984, all funeral service providers, defined as someone who sells or offers to sell funeral goods and/or services to the public, in Kentucky and nationwide, were required to adhere to the provisions of the rule.⁷⁵ Failure to comply could result in fines as expensive as \$16,000 per violation.⁷⁶ Ten years after it first went into effect, in 1994, several provisions of the rule were changed to amend the rule to its current form.⁷⁷ Despite Kentucky’s habitual tardiness in regulating the most current innovations and developments within funeral service in America, funeral directors and embalmers working in the Commonwealth were required to immediately accept and adhere to the policies of this regulation. The implementation of the Funeral Rule was overdue in and of itself, coming to fruition two decades after Congress was first made aware of the alleged controversies. Nonetheless, since going into effect, the Funeral Rule has provided several structures and regulations that all funeral service providers must adhere to.

Quite possibly the most major component of the Funeral Rule was the implementation of a required General Price List (GPL) to be distributed by a funeral service provider to an individual in a number of different scenarios. A consumer must be provided with a GPL anytime that he or she engages in a conversation with a representative of the funeral establishment to discuss: “the type of funeral or disposition that [the funeral establishment] can arrange, the specific goods and services that [the funeral provider] can offer, or the prices of [the funeral establishment’s] good and services.”⁷⁸ Furthermore, the

⁷⁴ Ibid., 40.

⁷⁵ Federal Trade Commission, *Complying with the Funeral Rule* (Washington, D.C.: Federal Trade Commission, 2015), 1.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid., 3.

FTC Funeral Rule required that the GPL explicitly disclose several statements and include prices for specific goods or services offered by the funeral provider. The required disclosures must be included on the GPL identically as they appear in the Funeral Rule – these encompass six different aspects of the goods and services offered by the funeral provider, which are as follows:

1. A consumer's right of selection
2. Embalming
3. Alternative Containers (included for purposes of direct cremations)
4. Basic Services Fee
5. Casket Price List
6. Outer Burial Container Price List.⁷⁹

The disclosures include, in easily understandable terminology, information that funeral service providers had allegedly misconstrued prior to the implementation of the Funeral Rule, as shown in Appendix A. The inclusion of these disclosures to consumers provides information they perhaps would have not previously known in an effort to prevent them from being manipulated by funeral providers.

In addition to the disclosures required on the GPL, funeral service providers are also required to include itemized prices for certain goods and services offered. The itemized price requirements include the most common goods and services sold and/or performed by the funeral provider, which are:

- Forwarding of remains to another funeral home
- Receiving remains from another funeral home
- Direct cremation
- Immediate burial
- Basic services of funeral director and staff, and overhead
- Transfer of remains to funeral home
- Embalming

⁷⁹ Ibid, 4-6.

- Other preparation of the body
- 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
- Either individual casket prices or the range of casket prices that appear in the Casket Price List
- Either individual outer burial container prices or the range of outer burial container prices that appear on the Outer Burial Container Price List.⁸⁰

The requirement for the itemized prices stems from the consumer's right of selection, meaning that he or she can choose only the goods and services he or she desires for purchase, except for the funeral provider's basic services fee. An additional reason for these itemized prices was to combat bundled packages that funeral providers had used prior to the implementation of the Funeral Rule. In these instances, funeral providers had bundled services to be competitive in the market; however, the extremely discounted prices of the bundled services made it impossible for consumers to make a cost-effective decision that still permitted them to choose only the goods and services they desired. Although funeral packages are not prohibited by the FTC Funeral Rule, the prices for each specific component of the packages must align identically with the itemized prices for each component thereof.⁸¹

The Federal Trade Commission Act prohibits businesses of any type from engaging in deceptive and fraudulent practices; thus, the Funeral Rule prohibits several deceptive acts in funeral service.⁸² The Funeral Rule forbids funeral providers from making any false

⁸⁰ *Ibid.*, 7; Kopp and Kemp, "Consumer Awareness," 329.

⁸¹ Federal Trade Commission, *Complying with the Funeral Rule*, 8.

⁸² Federal Trade Commission, *Complying with the Funeral Rule*, 18.

claim that the purchase of a good or service is required by law, when it is not. The most common misconception in the field of mortuary law is that embalming is required by law. As the required disclosure reads, except in certain special cases, embalming is not a legal requirement. Additionally, other misrepresentations include the telling of consumers that certain products are legally required for the carrying out of the services selected. In the instance of direct cremations, funeral providers are prohibited from requiring consumers to purchase a casket.⁸³ The FTC Funeral Rule also bans funeral providers from requiring that an outer burial container be purchased (except when the cemetery requires it).⁸⁴ Funeral providers must also notify consumers if there is a difference between the cost and price of a cash advance item if marked-up.⁸⁵ Lastly, funeral providers are prohibited from marketing certain goods or services by making the claim that they would provide indefinite preservative or protective agents or qualities.⁸⁶

In addition to these prohibited misrepresentations, the FTC Funeral Rule forbids embalmers from embalming without consent of the family of the decedent and “subjecting consumers to ‘tying’ arrangements, which require [the] purchase of any funeral good or service as a condition of purchasing any other good or service.”⁸⁷ These prohibited measures and required disclosures were made implemented to protect consumers of funeral goods and services and the sanctity of funeral service as well.

The implementation of this administrative ruling was not without debate, issue, or backfire. One of the most significant issues with the FTC Funeral Rule is that, even after

⁸³ Ibid.

⁸⁴ Ibid., 18-9.

⁸⁵ Ibid., 19.

⁸⁶ Ibid., 19.

⁸⁷ Kopp and Kemp, “Consumer Awareness,” 328.

nearly 33 years after it first went into effect, many consumers are not aware, nor fully know the rights permitted them by the Federal Trade Commission. In a study by Kopp and Kemp, the results from their survey showed that the respondents had a moderately low knowledge of their rights regarding the purchase of funeral goods and services.⁸⁸ This undermines the effectiveness of the FTC Funeral Rule in that it begs the question: what good are ensuring consumers have rights if they are ignorant of them? Additionally, many of the concerned citizens that pushed for the implementation of some sort of regulation had issues with pricing inconsistencies and high variances for the same services in similar geographic locations. The Funeral Rule did not address this issue thoroughly and made no reference to the inflation and rising cost of dying, both of which were primary issues for many of the concerned citizens.

A faction of funeral providers was very resistant to the implementation of the Funeral Rule from its outset. However, the Funeral Rule did serve its purpose in many ways. In 1989, in the case FTC v. Hughes, allegations of hundreds of manipulative and misrepresentative funeral practices were levied against a funeral home in Texas which was ultimately fined \$80 thousand for not complying with the Funeral Rule.⁸⁹ However, the largest penalty incurred by a funeral home since the implementation of the Funeral Rule came in 1996 when Restland Funeral Homes were charged \$120 thousand for failing to comply.⁹⁰

⁸⁸ Ibid., 335.

⁸⁹ Kopp and Kemp, "The Death Care Industry," 158-9; Ray O. Werner and Nick L. Nicholas, "Regulation of Product Characteristics," *Journal of Marketing* 54, no. 1 (1990): 116. Academic Search Complete (9602131060).

⁹⁰ Kopp and Kemp, "The Death Care Industry," 150.

Although the Funeral Rule has eliminated several instances of manipulative and unethical business practices, several funeral providers were resistant to the implementation of the regulation and saw it as a threat to the funeral industry. Some funeral providers blame the Funeral Rule for lessening the competitiveness of the funeral market.⁹¹ Others claim the administrative agency published the rule without the input of funeral service professionals; and, thus, the structure of the industry has suffered from the rulings of bureaucrats who had no prior knowledge of the goings on of funeral service.⁹² Although not a perfect rectification to the issues facing funeral service in the mid-20th Century, the Funeral Rule has been a transformative and beneficial ruling to protect consumers in what is possibly one of the most difficult times of their lives.

The Contemporary Authority on Kentucky Embalming and Funeral Directing

Following the 1960 revision, the attention brought by the implementation of the FTC Funeral Rule resulted in a revision to the statutes governing embalming and funeral directing in the Commonwealth. For the first time in the history of mortuary law coverage in Kentucky, the statutes were revised in a somewhat regular manner beginning in the 1980s. This was likely inspired by the implementation of the monumental Federal Trade Commission regulation.

Certain statutes within Chapter 316 of the Kentucky Revised Statutes were amended or created on two separate occasions in the 1980s. In 1984, the Kentucky General Assembly made minute amendments to several statutes; however, the most important came in the form of the creation of the Funeral Establishment License, whereby any

⁹¹ Ibid., 161.

⁹² Ibid.

facility designed for the purpose of practicing embalming and/or conducting funerals must be licensed by the State Board of Embalmers and Funeral Directors.⁹³ Additionally, a statute created in 1984 established a licensee's right to have a hearing by the State Board of Embalmers and Funeral Directors in the event of an alleged violation.⁹⁴

Just four years later, in 1988, many of the same statutes were amended. Since these amendments came only four years after the previous revisions, it appeared that Kentucky mortuary law may have had the transformation it needed for so many years to become a competent, adequate series of statutes to effectively govern the industry. The most significant amendment in 1988 was the creation of the position of an Inspector of the Board of Embalmers and Funeral Directors of the Commonwealth of Kentucky.⁹⁵ This position was founded to give an individual the statutory right to enter any funeral establishment to ensure that all licensed individuals and registered apprentices were compliant with the law and that there were no violations of Chapter 316 in the establishment or by its employees.

The future of Kentucky mortuary law continued to look promising in 1990 when another revision was made. The only new law enacted in Chapter 316 during the 1990 General Assembly was the requirement that all licensees attend continued education lectures and seminars.⁹⁶ Although the requirements have been modified since then, all licensed funeral directors and embalmers are required to obtain 12 hours of continued education in the field every two calendar years.

⁹³ KY. REV. STAT. ANN. §316.125 (<http://www.lrc.ky.gov/Statutes/statute.aspx?id=31066>).

⁹⁴ KY. REV. STAT. ANN. §316.155 (<http://www.lrc.ky.gov/Statutes/statute.aspx?id=31073>).

⁹⁵ KY. REV. STAT. ANN. §316.260 (<http://www.lrc.ky.gov/Statutes/statute.aspx?id=31084>).

⁹⁶ KY. REV. STAT. ANN. §316.132 (<http://www.lrc.ky.gov/Statutes/statute.aspx?id=31070>).

Despite these seemingly regular changes, the next amendment to Chapter 316 came in 1996. Before this chapter was revised, another element of Kentucky statute was established under the purview of mortuary law – crematoria and crematory operators, located in KRS 367, the consumer protection chapter. It comes as no surprise that, by seemingly ignoring major changes within the profession, Kentucky statute did not first require crematories nor crematory operators to be certified by order of statute until July 1994.⁹⁷ By this time, cremation had become a universally-accepted and increasingly popular means of disposition.

The statutes focused on in this research, specifically KRS 316.150 and 316.990 were only slightly modified in 1996, mostly consisting of sentence restructuring and changes in word usage. However, there were some important changes that were implemented during the 1996 General Assembly of the Kentucky legislature. Among the major changes was the expansion of disciplinary action under KRS 316.150 to registered apprentices. This came 36 years after the 1960 Kentucky Court of Appeals case, Johnson v. Correll, which brought attention to the lack of statutory law regarding apprentices who violated components of KRS 316. Per the 1996 version of KRS 316.150(2), “The board may refuse to issue, may revoke, or suspend and impose probationary conditions on the registration of an apprentice.”⁹⁸ Had the law been revised shortly after the case was heard by the Kentucky Court of Appeals in 1960, it would have prevented other cases from potentially occurring with the same ramifications as the Johnson v. Correll case. Instead,

⁹⁷ KY. REV. STAT. ANN. §367.97504 (<http://www.lrc.ky.gov/Statutes/statute.aspx?id=35137>).

⁹⁸ 1996 Ky. Acts Chapter 149 (KY. REV. STAT. §316.150(2)).

the law remained inadequate in detailing the possible sanctions imposable to apprentices for more than three decades.

With regard to the penalties section of Chapter 316, the possible monetary sanctions possible were expanded with the 1996 revisions. Licensees had been subject to sanctions of \$100 for violations of Chapter 316 prior to the 1996 revision; however, the possible sanctions were expanded to include imprisonment of not more than six months and monetary damages from a minimum of \$50 to a maximum of \$500.⁹⁹ These penalties applied to individuals engaging in the business without a license and to establishments not licensed by order of this statute.

Within two years, most statutes within Chapter 316 would be revised to their current form. Unfortunately, the 1998 revision made no changes within the penalties section whatsoever and only deleted four insignificant words in the KRS 316.150 subsection.¹⁰⁰ Since March 18, 1998, the law governing the possible sanctions for embalmers and funeral directors and the eligible penalties to be given have remained untouched. For nearly twenty years, these statutes have been the most current law, despite rising issues and multiple appellate court cases in recent decades directly relating to provisions of this chapter of the Kentucky Revised Statutes. If legislators had been more attentive to issues promulgated from cases dating as far back as 1960 regarding these statutes, they could have been revised sooner to prohibit additional disputes and clarify the law. Instead, the law continues to be vague in sections with no urgency to make any amends to it.

⁹⁹ 1996 Ky. Acts Chapter 149 (KY. REV. STAT. §316.990).

¹⁰⁰ 1998 Ky. Acts Chapter 90 (KY. REV. STAT. §316.150).

Since the new millennium, five statutes within Chapter 316 have been amended, the most recent of which was in 2012. Occurring in 2004, 2006, and in 2012, none of these revisions contained any major transformation that clarified any aspect of the law that was previously vague. Despite somewhat recent revisions, the law remains unclear and continues to not anticipate many new innovations or issues that could result from the lack of thorough explanation of the law. The 21st Century has also brought about multiple appellate court cases that pertain to certain aspects of the law that remain unclarified. These court cases have occurred due to a lack of clarity within the law that has not yet been amended to eliminate further confusion.

Involvement by the Courts

Since 2000, there have been at least two appellate court cases heard in the Commonwealth of Kentucky with direct reference to KRS 316.150. In 2005, Richard New and the Lake Cumberland Funeral Home in Somerset, Kentucky, were found in violation of permitting an unlicensed individual to engage in the practice of funeral directing and embalming.¹⁰¹ In a complaint submitted to the Kentucky Board of Embalmers and Funeral Directors, the Lake Cumberland Funeral Home allegedly allowed three unlicensed employees to “pick up bodies, embalm bodies, direct funerals, and direct graveside services.”¹⁰² The decision of the board to sanction this funeral director and funeral home were appealed by the defendants; however, the appellate court ultimately upheld the lower court’s decision to sanction.

¹⁰¹ Richard New and Lake Cumberland Funeral Home v. Commonwealth of Kentucky, Kentucky Board of Embalmers, 156 S.W.3d 769 (2005).

¹⁰² Ibid.

In a separate court case, Kentucky-licensed funeral director and embalmer, J. Steve Ward, of Woodford County, appealed for a new hearing following an investigation by the Kentucky Board of Embalmers and Funeral Directors following a series of sexual crimes in which Ward had pled guilty.¹⁰³ After these guilty pleas, the state board began an investigation that would potentially put Ward's license in jeopardy. However, through a series of evidentiary issues and claims of overstepping authorities, a new hearing was requested by Ward and has been ordered by the Court of Appeals of Kentucky.¹⁰⁴ While KRS 316.150 makes no reference to acts of sexual misconduct as due cause for disciplinary actions, the statute does identify that the board may impose a sanction and fine for: "Being convicted of any felony, or any misdemeanor if the misdemeanor relates to the practice of embalming or funeral directing. For purposes of this subsection, a conviction includes a finding or verdict of guilt or an entry of a guilty plea or a plea of no contest."¹⁰⁵ Given this statement included in the statute, Ward would be eligible for sanction; however, he contested in his appellate brief that the board had previously permitted other convicted felons to retain their licenses, although this claim is unsubstantiated.¹⁰⁶

The Current Status of the Law

Simply put, the law is vague. Most all sections of Chapter 316 of the Kentucky Revised Statutes have not been revised since 1998 and do not take into consideration many changes that have developed in the industry since then. Among those is the rising

¹⁰³ J. Steve Ward v. Kentucky Board of Embalmers and Funeral Directors, 2016 WL 3453556 (2016).

¹⁰⁴ Ibid.

¹⁰⁵ 1998 Ky. Acts Chapter 90 (KY. REV. STAT. §316.150(1)(b)).

¹⁰⁶ Ward v. Kentucky Board of Embalmers and Funeral Directors, 2016.

popularity of online education for students of mortuary science, which has become an issue in several states, some of which do not accept online degrees in mortuary science as an acceptable fulfillment of licensing qualifications. This is not the only innovation of the modern era that is not reflected in the law. In a recent conversation with the Inspector of the Kentucky Board of Embalmers and Funeral Directors, he expressed the vague nature of the penalties subsection, found in KRS 316.990. He expressed that the sanctions were not reflective of financial inflation and do not instill within violators an urgency to halt their illegal actions.¹⁰⁷ The vague nature does not stop here though.

In addition, beyond the scope of the administrative regulations of Chapter 316, mortuary law in its entirety within the frameworks of Kentucky law is inadequate. Despite the rising popularity of alternative forms of disposition, there is no statutory regulation within the Kentucky Revised Statutes that addresses the legality of ecologically-friendly burial, although it has several health and sanitary risks associated therewith. This form of disposition, more commonly known as green burial, is the disposition of a body without embalming or any other preservative technique in completely biodegradable materials and clothing. Many other states are seeing an influx of interest in this alternative form of disposition, especially as more people are becoming considerate of the environment. The lack of statutory coverage in Kentucky regarding green burials does not prohibit it from being possible within the Commonwealth; however, if done in large magnitudes, it would behoove lawmakers to address this form of disposition due to the health and sanitation risks involved with this form of disposition.

¹⁰⁷ Dale Powell, personal spoken dialogue.

In addition to alternative dispositions, there has also been increased discussion as to whom should have the authority to make funeral arrangements. This has been the topic of the most recent, monumental legislation passed by the Kentucky General Assembly regarding mortuary law.

Recent Developments in Kentucky Mortuary Law

The past year has brought to Kentucky mortuary law quite possibly the largest reformation since the implementation of the FTC Funeral Rule in 1984. The Funeral Directors Association of Kentucky (FDAK), the primary lobbying organization for funeral directors and embalmers in the Commonwealth, had advocated for this major change to lawmakers throughout the 2016 Kentucky General Assembly. In January 2016, the FDAK released a legislative news release to embalmers and funeral directors in the Commonwealth that state senators Paul Hornback and John Schickel had introduced a new bill regarding an individual's rights of disposition and funeral planning options in the state senate, known as Senate Bill 103.¹⁰⁸ This act would, upon its passage into law, become a subsection of KRS 367.

Senate Bill 103 was designed to “allow an individual to make sure that his or her final wishes are carried out and also would relieve the funeral home/funeral director or cemetery from any liability for following the expressed wishes of the individual.”¹⁰⁹ While prearranged funeral contracts have been common for many decades, especially becoming popular in the 1960s in Kentucky, the arranged contracts were not necessarily legally binding. In these arrangements, if the next-of-kin or some person entrusted with

¹⁰⁸ “The FDAK Legislative News,” The Funeral Directors Association of Kentucky, Inc., January 19, 2016.

¹⁰⁹ Ibid.

making funeral arrangements for an individual with a prearranged contract did not desire to carry out the wishes of the decedent, they were not legally required to do so. This bill would ultimately change that by implementing a form known as a Funeral Planning Declaration Document wherein an individual could name a designee, who is not required to be a relative, to carry out the arrangements listed therein exactly how they appear.¹¹⁰ If the individual for whom the prearranged funeral is made opted to not declare a designee, the Funeral Planning Declaration Document allows for the individual to make explicitly clear the funeral arrangements and products they desire in a legally binding contract, as shown in Appendix B. This bill was signed into Kentucky law as KRS 367.93103 and became effective July 15, 2016.¹¹¹

The Funeral Planning Declaration Act was a monumental transformation because it created a legally binding prearranged funeral for the first time in the history of the Commonwealth. This law has been received by funeral directors with resistance and hesitation, largely due to fears of the validity of the document. Some funeral directors feared the ramifications of honoring wishes listed within the document that differed from those serving as the informant and making the funeral arrangements. Nonetheless, funeral service professionals need not be hesitant to adopt this form into their usual protocol for writing preneed contracts because it alleviates liability from them and the funeral home at which they are employed at the time of the individual's death.

This legal development has also merited hesitant reactions from industry professionals because it potentially overrides the authority of the next-of-kin following the order of

¹¹⁰ "Funeral Planning Declaration Bill Update," *FDAK Member Newsletter*, September 1, 2016.

¹¹¹ 2016 Ky. Acts Chapter 59

descent as outlined in KRS 391.010.¹¹² Wary of the consequences of not obtaining permission and acceptance from the next-of-kin before advancing with any funeral arrangements, funeral directors have been somewhat cautious to incorporate this document into their normal procedure. However, this law was passed with the intent to protect the wishes of the deceased and to alleviate the funeral home and/or funeral director from any liability.

Future Issues

The future of funeral service and mortuary law in Kentucky is beyond the scope of this research as a history of the development of mortuary law to this point; however, it is important to mention a pertinent issue currently being discussed among funeral providers throughout the Commonwealth.

The Funeral Directors of Association of Kentucky has released a document to all member firms notifying them of “important information that could change funeral service in Kentucky.”¹¹³ This potential transformation could develop from significant tax reform within the Kentucky Tax Code that would ultimately require funeral providers to charge sales taxes for their services.¹¹⁴ Funeral services and merchandise are not currently subject to sales tax in Kentucky; however, if proposed reforms are made to the tax code, then the services funeral professionals provide could be subject to sales tax. The FDAK and its political action committee are vehemently contesting these potential reforms to stand up for consumers within the Commonwealth, protecting grieving consumers from

¹¹² 1974 Ky. Acts Chapter 328, §2.

¹¹³ “Important Information that Could Change Funeral Service in Kentucky,” The Funeral Directors Association of Kentucky, Inc., 2016.

¹¹⁴ Ibid.

additional financial burden in an already emotionally trying time. These reforms could potentially be detrimental to families, like those struggling to afford even the most basic services or the individuals who would be forced to pay sales tax at the time of death for the deceased's prearranged funeral. This is but one of myriad issues that could arise within the field of mortuary law in the Commonwealth of Kentucky. It is impossible to anticipate the innumerable possible issues that may arise. Regardless of the issues that may arise, funeral service practitioners and concerned consumers remain hopeful that the law will be applied equitably and will rectify issues in a timely, effective way.

Conclusion

Mortuary law in the Commonwealth of Kentucky undoubtedly has a rich history from its early beginnings in the infancy of the 20th Century. Throughout the many years and several statutory changes, court cases, federal mandates, and administrative regulations, this field of law seems to have lacked focus and the attention it deserves. Every person will ultimately face death; additionally, though, most everyone will likely be tasked with arranging the funeral of a loved one sometime during their life.

Though Kentucky has made several important and necessary revisions to its laws governing the practices of embalming and funeral directing within the past 113 years, the lack of depth and attention to industry changes unfortunately make these laws outdated, ambiguous, and potentially harmful for funeral providers and consumers alike. To remain representative of the current state of the industry, the law should be given more regular attention and be updated to reflect changes and issues that arise. Perhaps if greater attention had been given throughout history, some of the issues would have never arisen at all. Since most aspects of current version of the chapter of Kentucky law regarding

embalming and funeral directing have not been amended in nearly 20 years, and at least a decade has passed between each major revision to the law throughout its history, perhaps Mark Twain's words are correct. As far as mortuary law is concerned, Kentucky law governing the behavior, business, and sanctions of funeral directors and embalmers lags by nearly twenty years since last amended. This is not an adequate protection for the funeral providers nor the consumers who continue to require this professional service.

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Appendix A: Required FTC Funeral Rule Disclosures

The disclosures listed hereafter are the exact, required text as written by the Federal Trade Commission. The portions written in boldfaced font are included as they are in the Funeral Rule; no emphasis has been added.

Right of Selection Disclosure:

“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.”

Embalming:

“[Except in certain special cases,] [E]mbalming 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, such as direct cremation or immediate burial, that does not require you to pay for it.”

Alternative Containers:

“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*).

Basic Services Fee – Option One:

“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.)

Basic Services Fee – Option Two:

“Please note that a fee of (*specify dollar amount*) for the use of our basic **services 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*).

The fifth and sixth required disclosures informs consumers that a casket price list and outer burial container price lists are available.

Casket Price List and Outer Burial Container Price List (If a separate document):

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

Outer Burial Container Price List:

“[In most areas of the country,] [S]tate and 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 burial vault will satisfy these requirements.”

Appendix B: Funeral Planning Declaration Document

COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

FUNERAL PLANNING DECLARATION FORM FPD-1, 10-16

Declaration made this ____ day of _____ (month, year). I, _____ (print name, also referred to as "Declarant" in this Declaration), being at least eighteen (18) years of age and of sound mind, willfully and voluntarily make known my instructions concerning funeral services, funeral and cemetery merchandise, ceremonies, and the disposition of my remains after my death. By executing this Declaration, I revoke any Declaration previously made.

Designee

1. A Designee is an individual designated and directed by the terms of this Declaration to carry out the Declarant's funeral plan or make arrangements concerning disposition of the Declarant's remains, funeral services, cemetery merchandise, funeral merchandise, or ceremonies;
2. If the Declarant does not designate a Designee in this Declaration, the Declarant shall provide instructions concerning funeral services, ceremonies, and disposition of the Declarant's remains;
3. A person is not considered to be entitled to any part of the Declarant's estate solely by virtue of being designated in this Declaration to serve as the Designee;
4. The Designee shall not be a provider of funeral or cemetery services, or responsible for any aspect of disposition of the Declarant's remains, or associated with any entity responsible for providing funeral or cemetery services or disposing of the Declarant's remains, unless the Designee is related to the Declarant by birth, marriage or adoption;
5. A Designee shall not be a witness to this Declaration;
6. If the Designee or alternate Designee fail to assume an obligation set forth in this Declaration, within five (5) days of notification of notification of the Declarant's death, the authority to make arrangements shall devolve pursuant to the terms of this Declaration or KRS 367.93117.

_____ I hereby declare and direct that after my death _____ (name of Designee) shall, as my Designee, carry out the instructions that are set forth in this Declaration. If my Designee is unwilling or unable to act, I declare _____ (name of alternate Designee) as an alternate Designee.

_____ I hereby elect not to select a Designee, and direct that the instructions listed herein for funeral services, ceremonies, and the disposition of my remains after my death be followed.

Instructions Concerning Funeral Services, Funeral and Cemetery Merchandise, Ceremonies, and the Disposition of My Remains After My Death

I hereby declare and direct that after my death the following actions be taken (indicate your choice by initialing or making your mark before signing this declaration:

(1) My body shall be (select one):

(A) Buried. I direct that my body be buried at _____.

(B) Cremated. I direct that my cremated remains be disposed of as follows, or if no method of disposition is selected then I leave the decision to my Designee:
 Placing them in a grave, crypt, or niche at _____,
or if left blank then at a location to be selected by my Designee;
 Scattering them in a scattering area; or
 On private property with the consent of the owner.

(C) Entombed. I direct that my body be entombed at _____.

(D) Donated. I direct that my body be donated as an anatomical gift pursuant to KRS 311.1911, et. seq. (Do not select if donation has been selected by another method).

(E) I intentionally make no decision concerning the disposition of my body, leaving the decision to my Designee.

(2) My arrangements shall be made as follows:

(A) I direct that funeral services be obtained from (if left blank then my Designee will decide): _____

(B) I direct that the following funeral services and ceremonial arrangements be made:

(C) I direct the selection of a grave memorial, monument or marker that:

(D) I direct that the following funeral and cemetery merchandise and other property be selected for the disposition of my remains, my funeral or other ceremonial arrangements:

(E) I direct my Designee make all arrangements concerning ceremonies and other funeral or burial services.

(3) ____ In addition to the instructions listed above, I request the following:

(4) I direct my Designee to make alternate arrangements to the best of the Designee's ability if it is impossible to make an arrangement specified herein because:

(A) A funeral home or other service or merchandise provider is out of business, impossible to locate, or otherwise unable to provide the specified service; or

(B) The specified arrangement is impossible, illegal, or exceeds the funds available or is inconsistent with the terms of the pre-arranged funeral or cemetery contract.

It is my intention that this Declaration be honored by my family and others as the final expression of my intentions concerning my funeral and the disposition of my body after my death. I understand the full import of this Declaration.

Signatures The following signatures and notary signature all need to be obtained:

Declarant, or another person in the Declarant's presence and at the Declarant's direction

Signed: _____ Date: _____

Declarant's City, County, and State of Residence: _____

Print name of person who signed at Declarant's direction (if applicable): _____

Witnesses

I believe the Declarant to be of sound mind and willfully and voluntarily executed the Declaration. I did not sign the Declaration on behalf of and at the direction of the Declarant. I am not a parent, spouse, child, or Designee of the Declarant. I am not entitled to any part of the Declarant's estate. The Declarant, or the person signing at the direction of the Declarant, signed the Declaration in my presence. I am competent and at least eighteen (18) years of age.

Witness _____
Printed Name _____
Date _____

Witness _____
Printed Name _____
Date _____

Notary Public or other person authorized to administer oaths

State of Kentucky
_____ County

Before me, the undersigned authority, came the Declarant and acknowledged that he or she voluntarily dated and signed this writing, or directed it to be signed and dated as above in his or her presence, on this the _____ day of _____, 20____.

Notary Public or other person authorized
to administer oaths

My Commission Expires: _____
Title: _____