



Funeral Consumers

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Protecting a consumer's right to choose meaningful, dignified, and affordable funerals since 1963

ANALYSIS AND SUGGESTED AMENDMENTS

HB 1202

*prepared by Joshua Slocum, Executive Director, Funeral Consumers Alliance
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Dear Colorado legislators,

Funeral Consumers Alliance, Inc., is a nonprofit federation of consumer information societies. We work to educate the public on their legal rights and options in funeral planning, with an eye to helping people control costs and exercise free choice. The Funeral Consumer Society of Colorado is our nonprofit volunteer chapter in your state. Part of our work is tracking legislation that affects consumer rights and industry practices. I have extensive experience in funeral law and consumer rights nationwide, and have participated in drafting sensible standards for lawmakers in several states.

HB 1202 is in need of substantial amendments. While it purports to better protect consumers from incompetent practitioners, it is so confusingly worded and poorly constructed that it could have several negative (though unintended) consequences. These include putting the rights of families to bury their own dead (without employing a mortuary) in jeopardy, stifling innovation in the funeral business (such as death midwifery) that could expand consumer choice and lower funeral costs, and raising unnecessary barriers to entry through excessive educational requirements.

FCA agrees that requiring commercial funeral providers to register with the state is a good thing. It would give the state some power to address consumer complaints and investigate malfeasance. HB 1202's provisions to better regulate crematories are also largely beneficial. However, many sections of the bill contradict each other, some sections completely obscure the intended effect through poor writing, and others are vague enough that we worry about the outcome for alternative funeral providers such as death midwives.

I've drafted the following suggested amendments as a guideline for the **minimum changes** that would make this bill acceptable from a consumer protection point of view. Many of them came about after discussions with the Colorado Funeral Director's Association. We have many points of agreement, but we do not have universal agreement, and I can only speak for FCA. The consensus from the Funeral Consumer Society of Colorado (our local chapter) and from death midwives I've spoken with is that **the bill really should be tabled and re-written from the ground up**. I'm inclined to agree with them. The legislative intent is just too unclear. Does the state want to require mere registration of funeral providers? If so, why does the bill require such extensive educational and internship requirements for some practitioners? Why is there no provision to recognize the burgeoning home funeral movement and to address commercial death midwifery in a way that wouldn't put that field at odds with conventional mortuary training requirements? Varying, sometimes competing, interests in the funeral business have all had input, but disinterested consumer groups have not. When you combine this with a bill drafter



Protecting a consumer's right to choose meaningful, dignified, and affordable funerals since 1963 who knows little about the funeral industry and its effect on consumers, you get a bill that raises more questions than answers.

Suggested Amendments

(I'll refer to the page numbers on which the text appears in the bill.)

- **pp. 3, 4** - The bill strikes the words “for compensation” from the definitions of “embalmer,” “mortuary science practitioner.” This inappropriately puts private families, clergy, etc., under regulatory requirements. The words “for compensation” should be reinserted (kept) in the bill. The state’s goal is not to prohibit private, family-directed funerals, only to regulate the commercial offering of funeral services.
- The current statute has a provision protecting the rights of religious groups to bury their own dead, and the bill includes another one that pertains to cremation. To make it clear that everyone, regardless of religion, has the right to bury their own dead privately, I suggested condensing the two into one, adding a phrase, and moving the whole thing to “12-54-108 Exceptions - safe harbor”. I took out several references to religious sects because only one is necessary, and I expanded it to include everyone (the law can’t favor the religious over the non-religious):
 - 1) This part 1 shall not apply to, or in any way interfere with, the duties of the following persons:

....
 - (2) (a) This **article** shall not apply to, nor in any way interfere with, any custom or rite of any religious sect in the burial of its dead, **nor shall it apply to the deceased’s next of kin or the persons with the legal right to control disposition of the body, who carry out the disposition privately, without pay. Such persons** may continue to care for, prepare, and bury the **bodies of their dead** free from any term or condition, or any provision of this **article**, and are not subject to this **article**, so long as the dead human body is refrigerated, frozen, embalmed, interred, or cremated within seven days after death.
- **p. 5** - The current requirement that a body be embalmed or in a “hermetically sealed” container is a problem for those who don’t want embalming or sealer caskets for religious or other reasons. I suggest following the model of most other states, which merely require bodies shipped by common carrier to be in rigid containers. Legislators should note that many airlines themselves don’t require embalming, and are happy to accommodate families who would prefer to ship their dead with dry ice. The entire provision should be struck and replace with:



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Bodies shipped by common carrier shall be enclosed in a rigid, leak-resistant container sufficiently constructed to ensure safe handling.

- **pp. 5, p. 13** - The sections on who can be permitted to enter the crematory or embalming room are too confusing. While the next of kin, or the person with the right to control disposition, may authorize the presence of anyone they choose with written permission, neither the current statute nor HB 1202 explicitly list the NOK or person with the right to control. To clear up confusion, the NOK or person with the right to control should be explicitly listed in the section authorizing various parties to be present.

p. 8 - The bill's language:

12-54-110. Registration required. (1) UNLESS PRACTICING AT A REGISTERED FUNERAL ESTABLISHMENT PURSUANT TO THIS SECTION, A PERSON SHALL NOT PRACTICE AS, OR OFFER THE SERVICES OF, A MORTUARY SCIENCE PRACTITIONER, FUNERAL DIRECTOR, OR EMBALMER NOR SHALL THE FUNERAL ESTABLISHMENT SELL OR OFFER TO SELL FUNERAL GOODS OR SERVICES TO THE PUBLIC.

.. is confusing. It shifts from referring to a "person" to an "establishment." That makes no sense. In addition, it could be construed to shut down retail casket stores if they don't register as funeral establishments. The Colorado Funeral Director's Association related that they, too, were concerned with that possible interpretation. I suggest the following rewrite:

(1) Unless practicing at a registered funeral establishment pursuant to this section, a person shall not practice as, or offer the services of, a mortuary science practitioner, funeral director, or embalmer, nor shall the person offer to sell funeral goods or services to the public. This shall not be construed to require direct-to-consumer retail casket vendors to register as funeral establishments.

- **p. 11** — The requirement for embalmers to spend 4,000 hours interning (that's almost two years of work, even after having gone to mortuary school, which includes embalming instruction) is excessive and draconian. I suggest cutting that requirement in half, at least. I believe CFDA disagrees with me on this point.
- **p. 12** - The provision requiring practitioners to use an "appropriate" vehicle for body transport is too vague. The legislature really shouldn't be in the business of dictating what's appropriate for someone's final ride. For example, farmers might want to be taken to a cemetery in a horse-drawn wagon — will someone decide that's not "appropriate?" If the legislature wants to ensure bodies aren't being hauled in



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the trunks of cars or in open pickup trucks, the following amendment would accomplish that while respecting consumer choice:

No funeral director, embalmer, cremationist, or mortuary science practitioner shall transport a dead human body in the passenger area of a vehicle, or in a non-enclosed cargo area that permits the body to be viewed by the public. However, this shall not be construed to prohibit transportation of the deceased in a casket or closed container in such an open cargo area for ceremonial purposes if requested by the next-of-kin or person with the right to control disposition.

- **p. 18** - The requirement to cremate 100 bodies before doing business as a cremationist is excessive, as is the 500-hour requirement. Cremation simply isn't that complicated. I suggest cutting these requirements in half. If cremationists follow the sensible protocols listed in HB 1202, this will do far more to ensure public confidence than repetitively cremating bodies for practice.
- **p. 22** - The following sentence is offensive and should be struck, "If a temporary container is used, the crematory shall disclose that the temporary container should not be used for permanent storage." We've seen some cemeteries and funeral homes "warn" families about "temporary" containers to goad them into buying urns they don't need or want. I have a set of cremated remains in my office that's been in a "temporary container" for more than 10 years. It's stamped "TEMPORARY CONTAINER," so I use it at public talks to expose this crass salesmanship. I can tell you the audience is horrified at such a blatant attempt to sell grieving people expensive urns. It's up to the family to decide what to store the ashes in. I'm sure the state doesn't really intend to mandate underhanded upselling.
- **p. 23** - Both CFDA and I agree that the bill's requirement to remove ANY implantable device before cremation must be changed. This would require funeral homes to take out mom's artificial hips, which is clearly not what the legislature intends. No funeral director, and no consumer, would want this to happen. The problem is only with pacemakers. I suggest the following rewrite:

A crematory shall not cremate a dead human body containing an implanted device with the potential to explode or cause harm to staff, such as a pacemaker.

p. 26 - Steffani Blackwood, Executive Director of CFDA, and I both agree that industry practitioners and consumer advocates have a right to be consulted by the state before regulations are implemented. HB 1202, however, only mandates consultation with industry. Consumer advocates have an important place in the promulgation of regulations; it would be a serious mistake for the state to give special preference to the regulated without balancing that with a requirement to seek input from consumer advocates. I suggest the following rewrite (additional sentence in bold):



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Before promulgating rules, the director shall seek input and advice from a person, or any state organization of persons, offering services that require registration pursuant to this article. **The director shall also seek advice and input from persons or organizations who represent the interests of funeral consumers, and who do not have a financial interest in the industry regulated under this article.**

END