



---

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

April 6, 2013  
Montana Board of Funeral Service  
Department of Labor and Industry

and

The Economic Affairs Interim Committee

**Request for Amendments to MAR Notice No. 24-147-33**

Ladies and gentlemen,

I write to you as the executive director of the nation's oldest and largest non-profit charity dedicated to protecting consumer rights in the funeral transaction, and as the co-author of the only book on funeral law that covers regulations in all 50 states (*Final Rights: Reclaiming the American Way of Death*. Upper Access, 2011). There are some wise and thoughtful provisions in the proposal to update the regulations governing licensed morticians. The incorporation of the FTC Funeral Rule and the clarification that it applies to funeral-related vendors above and beyond funeral homes, for example, is most welcome.

However, there are some troublesome provisions which will have terrible consequences for the availability of lower-cost options for consumers.

From page 395:

- (2) The preparation of human remains for final disposition, such as washing, disinfecting, embalming, removing hazardous implants, dressing, and casketing must only be performed in a preparation room of a licensed mortuary or mortuary branch with a preparation room.

Some interested parties may be unaware that members of the historically entrenched full-service funeral industry have been waging a war against low-cost competitors in Montana. This provision appears to be a part of that effort. While it sounds reasonable on its face, the true effect becomes clear when we note this would **render illegal** the very basic preparation of human bodies by simple, direct cremation and direct burial businesses that do not offer embalming and thus have no need of an embalming room. This provision serves no rational purpose to protect consumers or the public in any way. It merely gives full-service, high-overhead funeral homes a legal monopoly by outlawing these basic preparations by entities other than full-service funeral homes.

Businesses such as Central Montana Crematorium, a low-cost cremation provider (it's important to note this is a perfectly legal, above-board business), have been subjected to frivolous complaints by competitors. These include allegations of illegal conduct such as removing pacemakers before cremation (Montana law **requires**

this removal), and washing and combing of a decedent's hair. Similar attempts were done through proposed legislation in 2007 and through yet more legally groundless complaints in 2012. See our coverage at:

Montana Undertakers Try to Shut Down Competition—

<http://www.funerals.org/newsandblogsmenu/blogdailydirge/96-montana-funeral-directors-try-to-shut-down-competition>

Montana: The Divine Right of Undertakers—<http://www.funerals.org/newsandblogsmenu/blogdailydirge/2433-montanaspoja2012>

The current proposal would:

- Give only high-overhead, fully equipped funeral homes the right to touch a decedent in any way for preparation. Crematories would be barred from doing the most basic tasks, including the absolutely necessary removal of pacemakers, which can explode if cremated! The new rules would render such crematories wholesale traders dependent on the very businesses that want to see them marginalized, and costs for consumer families would rise.
- Make it illegal for a direct-to-consumer crematory to wash and comb the hair of a decedent on their own premises, even if a family requests this small service for a final goodbye. This is utterly irrational. There is no legitimate reason to require such basic tasks to be done in the post-mortem equivalent of a surgical suite—the fully equipped embalming room of a full-service mortuary.

Even more insidious is the following proposal, which I fear will be interpreted to make direct-to-consumer cremation illegal by outlawing such business owners from **discussing their services with consumers**:

(3) Unless requested by a consumer making the initial contact to make funeral arrangements at a place other than the mortuary or mortuary branch, funeral arrangements, both pre- and at-need, may only be performed in a licensed mortuary or mortuary branch.

What purpose is served in requiring all arrangements conversations to occur only on the physical premises of a full-service funeral home? Yes, I note the phrasing “unless requested by a consumer making the initial contact,” but given the behavior of Montana's Funeral Board in the past I have no confidence this would protect an operator such as Central Montana Crematorium. If the goal is to prohibit predatory sales pitches by roving salespeople at nursing homes, for example (a goal Funeral Consumers Alliance strongly supports) that should be accomplished with clear, direct, and specific language that does not allow wiggle room for creative interpretation.

Funeral Consumers Alliance enthusiastically supports the adoption of appropriately stringent laws and regulations to protect consumers who are making a purchase at one of the most vulnerable times in their lives. We were instrumental in the passage of the FTC Funeral Rule in 1984, and we have assisted legislatures and regulatory bodies countless times at the state level. Most recently, we were called to testify before the Congressional Subcommittee on Consumer Protection in support of a bill (sadly, it failed) to expand FTC protections to cemetery consumers.

But there is a difference between necessary regulation and rent-seeking dressed up as protecting the public. Though many of the drafters certainly have no intention to do so, the effect of these provisions is to give a rapidly obsolescing funeral industry a legal monopoly so that it does not have to contend with changing market and consumer preferences. Please do not let this happen. **Grieving families have it hard enough without the state restricting their choices and raising the cost to bury their dead so that old-school undertakers can enjoy profits that honest competition would deny them.**

I was gratified to see Montana's legislature shut down these attempts in recent years. I fervently hope the state's administrative arm will likewise say no to the use of the administrative process to further an economic turf war.

As always, I am happy to make available additional documentation and copies of my book to interested parties. Along with this letter I am attaching a .pdf of the chapter on Montana from *Final Rights*.

Finally, Funeral Consumers Alliance has no economic or other interest in this issue. We do not accept payment or any compensation from any segment of the deathcare business; we act solely to further our charitable mission of protecting and expanding consumer choice in affordable funerals.

Sincerely,

Josh Slocum  
Executive Director

cc: Bill Spoja, proprietor, Central Montana Crematorium

