



Funeral Consumers

ALLIANCE

33 Patchen Road
South Burlington, VT 05403
www.funerals.org



Funeral Ethics Organization

85 Upper Access Road
Hinesburg, VT 05461
www.funeraethics.org

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Dear Minnesota legislators,

We're writing to you as consumer advocates concerned about the passage of SF 802, which made significant changes to the state's funeral laws. Lisa Carlson is the author of *Caring for the Dead: Your Final Act of Love*, the only state-by-state manual of funeral and burial law for consumers. She is also Executive Director of Funeral Ethics Organization, a nonprofit consortium of industry members and consumers. Joshua Slocum is the Executive Director of Funeral Consumers Alliance, the country's oldest and largest nonprofit funeral consumer watchdog organization. We are co-authors on the forthcoming third edition of Carlson's book, *Caring for the Dead: Your Consumer Rights*. We believe lawmakers were misled by arguments presented in favor of SF 802. Rather than being merely a "housekeeping" bill to clean up the funeral-related statutes, the bill stripped away important family, religious, and constitutional rights in the care of the dead, and mandated bizarre requirements that have no sound scientific or public policy basis. We know lawmakers have limited time, and cannot be experts in every field; since funeral law is our expertise we're hoping the information below will clarify our concerns. We hope you'll act to amend these mistakes this legislative session.

Below is a summary of our concerns, in order of priority:

1. SF 802 puts new limits on who may care for the dead, hampering a family's choices. Now, only the person with the right to control disposition may transport a body, for example, not another family member, church committee, or unpaid designee. [149A.01 Subd. 3 (c)] We cannot understand this. Families, friends, and religious communities of the dead are not in the *business* of directing funerals. They are taking on what many consider a sacred duty. The state has no right to tell such communities they may not bury their own, for free, in private. Preventing family members from helping the individual with the right to control disposition seems cruel — almost designed to make the process difficult or impossible.

In addition, the reference in your statutes regarding "recognized" religions appears to conflict with Article 16 of the Minnesota Constitution. [149A.01 Subd. 3(b)] We don't imagine the legislature really wants to be in the business of adjudicating which religious practices are "recognized" — this would be squarely unconstitutional.

2. MN law sadly maintains a provision for hospitals and other institutions to refuse to release a body directly to a family that might wish to care for their own dead, requiring the use of a funeral director instead. **[149A.01 Subd. 3 (e)]** We've been told this practice is for "liability" purposes. But it seems to us the hospital is putting itself in a serious liability position **by denying legal kin the right to the custody of their dead, and requiring the family to relinquish the body to someone who may be a total stranger.** We wouldn't even be debating this if the question were whether a father could accept custody of his living son at discharge; death does not change the family bond. Perhaps families who are forced to give custody of their dead unwillingly to a funeral home by an uncooperative health care facility should submit the funeral bill to the hospital.

3. SF 802 missed the opportunity to eliminate the requirement of embalming for public viewing — there is no scientific basis for such a requirement. **[149A.91 Subd. 3]** If legislators are not familiar with what's involved with embalming, we strongly suggest you read up on it or watch a video of the process before passing (or keeping) laws that require what many consider a brutal and invasive process. Please note that Minnesota is the **only state in the nation with a statute requiring embalming for public viewing.** To your credit, refrigeration is now an alternative to embalming in other circumstances. Alas, your statutes still imply that embalming will be required in the case of infectious diseases, the worst possible circumstance under which to embalm. Hawaii and Ontario rightly forbid embalming of infectious cases. Ohio requires immediate disposition. Embalming does **not** kill many diseases, does **not** protect the public health, and the Centers for Disease Control does not recommend embalming for any situation.

4. Pickup trucks are now among the vehicles banned from body transport, even though they may be the vehicle of choice for a rural farm family. **[149A.01, Subd.7(6)]** Mortuary Science Director David Benke told the *Pioneer Press*, "We don't think that's respectful to the deceased." What kind of dignity is there for a family forced to borrow or rent a vehicle that isn't theirs? It's hard to imagine how Minnesota legislators can justify dictating what kind of vehicle you take your last ride in. When did matters of "dignity" or taste become the proper concerns of the health department or the legislature?

5. MN law now bans family members from the preparation room in a funeral home. **[149A.91 Subd. 2]** Why? For those who have lost a child, it may be important to stay involved with all final preparations of that child's body. We can't imagine why a lawmaking body would want to tell a mother she can't be with her child's body as it's dressed, or that she cannot dress her child herself. Surely legitimate privacy concerns can be addressed with better wording and consent of the family.

Although we are not lawyers, Carlson has studied the funeral laws of every state over the last 20 years, and Slocum has done so for seven years. We would be happy to serve as resources for any new legislation you may be considering.

Sincerely,

Lisa Carlson
Joshua Slocum