

**STATEMENT OF EMERGENCY REGULATION
201 KAR 15:110E**

During its 2021 regular session, the General Assembly passed House Bill 220 (attached), an amendment to KRS 316.030 to allow the Board of Embalmers and Funeral Directors to establish fees through the promulgation of administrative regulations and amend KRS 316.110 to remove outdated language and processes. HB 220 was signed by the Governor on March 15, 2021. This emergency regulation removes fees from this regulation and centralizes all fees in one regulation. HB 220 goes into effect June 29, 2021. The renewal period of individuals and establishments for the Kentucky Board of Embalmers and Funeral Directors is July 1 though 31st. This emergency regulation will be replaced by an ordinary regulation and will be submitted at the same time. The ordinary regulation is identical to the emergency.

ANDY BESHEAR, Governor
CHRISTI K. MOFFETT, Executive Director

**BOARDS AND COMMISSIONS
Board of Embalmers and Funeral Directors
(Emergency Amendment)**

201 KAR 15:110E. Funeral establishment criteria.

EFFECTIVE: June 30, 2021

RELATES TO: KRS 316.010, 316.030, 316.125, 316.127, 316.130, 316.260, 16 C.F.R. 453.2(b)(2)-(5), 29 U.S.C. 651

STATUTORY AUTHORITY: KRS 316.125(1), 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.125(1) prohibits operating a full-service funeral establishment, a visitation and ceremonial funeral service establishment, or an embalming service establishment without first obtaining the applicable license from the board. KRS 316.210(1) authorizes the board to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. This administrative regulation establishes the minimum requirements for the licensing and operation of a funeral establishment.

Section 1. General Requirements. (1) The interior and exterior of the establishment shall be kept free and clean of litter, dirt, debris, and clutter or other objects or conditions that present a potential or actual hazard to the health, safety, or welfare of the public and the funeral establishment's employees.

(2) Only the following persons shall be permitted in a preparation room during the course of embalming a dead human body:

- (a) Employees of the establishment where the human body is being embalmed;
- (b) Registered apprentices;
- (c) Members of the family of the deceased;
- (d) Authorized representatives of the deceased; or
- (e) Any other individual otherwise allowed by law.

(3) An establishment shall maintain the following documents, if applicable:

- (a) Board approved embalming reports that include:
 - 1. The name of each body embalmed;
 - 2. The date of death;
 - 3. The date and time that the embalming took place;

4. The name and signature of the embalmer; and
5. The embalmer's license number;
- (b) Proper documentation of the authorization to embalm; and
- (c) Accurate and current copies of:
 1. The casket price list;
 2. The outer burial container price list;
 3. The general price list; and
 4. The statement required by the Federal Trade Commission in 16 C.F.R. 453.2(b)(2) through (5), as maintained in the general practice of the establishment.
- (4) An establishment shall maintain embalming reports and documentation of authorization to embalm for a minimum of three (3) years.
- (5) Establishments located in any public office building, strip mall, public storage, mini-storage, mini-warehouse, multiunit storage complex, or similar facility used by the general public for the storage of goods shall be ineligible for a license.
- (6) The building in which an establishment is located, and any sidewalks and parking areas provided adjacent to the establishment, shall be in conformity with the requirements of the applicable federal, state and local statutes, administrative regulations, ordinances, and zoning provisions relating to publicly-accessible buildings and establishments.
- (7) An establishment shall display a sign that:
 - (a) Identifies the name of the establishment; and
 - (b) Is in a location visible from an adjacent public road.
- (8) An establishment shall have adequate rest room facilities for members of the public if public funeral services or visitation or ceremonial services will be conducted in the establishment.

Section 2. Visitation and Ceremonial Funeral Service Establishment. An establishment that provides visitation and ceremonial funeral services shall have:

- (1) A viewing area or chapel that shall be at least 400 square feet in size; and
- (2) The applicable equipment necessary for conducting and arranging funeral services, including:
 - (a) Tables or desks and chairs for arrangement conferences;
 - (b) Seating for the viewing room;
 - (c) Casket bier;
 - (d) Register book stand;
 - (e) Officiant stand;
 - (f) Flower display stands; and
 - (g) Organ, piano, music-producing equipment, or any suitable combination of these items.

Section 3. Embalming Service Establishment. (1) An establishment that provides embalming services shall:

- (a) Have facilities and a preparation room that comply with the requirements of the Occupational Safety and Health Act, 29 U.S.C. 651;
- (b) Have at least one (1) approved embalming table and all professional instruments necessary for embalming and the preparation of dead human bodies; and
- (c) Ensure that a preparation room shall not be used as a storage area other than for supplies pertaining to the embalming and preparation of dead human bodies.
- (2) Human remains shall not be prepared for disposition except by a licensed embalmer or a Level 2 apprentice, in accordance with KRS 316.030, in a preparation room that meets the requirements of this administrative regulation.

(3) All windows and doors shall be constructed or screened to prevent persons from looking into the preparation room.

(4) Each preparation room entrance shall be lockable, shall be locked when not in use, and shall display a sign indicating private or restricted entry.

(5) Licensed embalmers may perform removals and transport dead bodies.

Section 4. Full Service Funeral Establishments. A full service funeral establishment shall have:

(1) An area available to the public devoted to the display of funeral merchandise. Caskets or casket sections may be viewed by sample, computer, catalog, or other display that corresponds to the current general price list for the funeral establishment; and

(2) A separate room or office for arranging funerals. This room may be used to satisfy the requirements of subsection (1) of this section.

Section 5. Inspections. (1) Each establishment shall be subject to inspection at the convenience of the board inspector.

(a) An establishment that is sited on more than one (1) parcel of real estate shall be required to notify the inspector of the location and identity of the separate parcels, and will be charged a separate inspection fee as set forth in this administrative regulation for each separate parcel, as if each parcel were a separately-licensed establishment.

(b) Failure of the establishment to be open and available for an inspection within a reasonable period of time after the inspector requests access for inspection shall be deemed by the board to be a violation of KRS Chapter 316, including KRS 316.150(1)(a), and may subject the establishment and its establishment manager to disciplinary action.

(2) The inspector shall inspect the establishment to see if it has suitable and dignified quarters appropriate for the category of services for which it is licensed.

(3) An establishment that provides embalming services shall have completed and signed embalming reports available for inspection upon request.

(4) The following forms shall be available for inspection or copying by the inspector:

(a) A current general price list of charges for services to the public;

(b) A current price list of caskets as charged to the public;

(c) A current price list of outer burial containers as charged to the public; and

(d) All apprentice calendars and apprentice travel forms.

(5)(a) An establishment seeking an initial inspection for the purpose of obtaining a new license under KRS Chapter 316 may request the inspection by the inspector of the Board of Funeral Directors and Embalmers of the Commonwealth of Kentucky, and will be assessed a fee ~~in the amount of \$250~~ as promulgated in 201 KAR 15:030 for the inspection. This fee will cover the inspector's initial visit, and one (1) subsequent visit for re-inspection to assure that any initial deficiencies have been cured.

(b) An establishment licensed under KRS Chapter 316 that is routinely inspected by the inspector of the Board of Funeral Directors and Embalmers of the Commonwealth of Kentucky shall be assessed an inspection fee, as promulgated in 201 KAR 15:030 payable to the board. ~~of \$400.~~ This fee shall not be assessed more than one (1) time per calendar year.

(c) An establishment licensed under KRS Chapter 316 that requires a re-inspection within a period of three (3) months following a routine inspection, due to a deficiency found by the inspector of the Board of Funeral Directors and Embalmers of the Commonwealth of Kentucky on a routine inspection, shall be assessed a re-inspection fee ~~of \$200~~ as promulgated in 201 KAR 15:030. This fee shall be paid regardless of any disciplinary action that otherwise may be taken against the establishment for the failure of the inspection.

(d) An establishment licensed under KRS Chapter 316 may request an inspection by the inspector of the Board of Funeral Directors and Embalmers of the Commonwealth of Kentucky, and shall pay a fee [~~of \$100~~] as promulgated in 201 KAR 15:030 for the inspection.

(e) If an establishment fails three (3) consecutive inspections within a period of six (6) months, any subsequent inspections required to determine if the failures have been cured shall require payment [~~of a fee of \$200~~] as promulgated in 201 KAR 15:030 for each subsequent inspection. In an instance of three (3) consecutive failures of inspections within six (6) months, the board may also, in its sole discretion, direct that the establishment in question cease operations for an appropriate period of time to permit the establishment to become compliant, and may assess a fine based upon the violations and failure to correct same.

(f) Inspection fees will be invoiced by the board to the licensee, and will not be due at the time of the inspection.

Section 6. Establishment Manager. (1) Each establishment shall have a Kentucky-licensed funeral director, a Kentucky-licensed embalmer, or an individual licensee as required by KRS 316.125(2)(b)(5) to manage and supervise the establishment.

(2) The establishment shall notify the board of a change of the funeral director or the establishment manager by submitting the Information and Name Change Application signed by the licensed owner and the new establishment manager within five (5) working days of the change.

(3) An establishment manager who leaves the employment of an establishment shall notify the board in writing within five (5) working days of the departure.

Section 7. Transferability. (1) Establishment licenses shall not be transferable.

(2) If a sale or lease occurs:

(a) The existing establishment license may remain in force by mutual consent of the parties for a period of thirty (30) days or until the next regularly scheduled board meeting, whichever occurs first.

(b) During the transition period, the establishment shall be operated under the name shown on the existing license until a new license is issued.

(c) An application for a new license shall be submitted for review at the next board meeting following the sale or lease.

(3) If a relocation or name change occurs, an Information and Name Change Application shall be submitted to the board.

(4)(a) Following the death of a Kentucky-licensed owner, funeral director, or embalmer, the establishment may operate for ninety (90) days while under temporary supervision by a licensed funeral director or embalmer. A licensee who is already identified as the establishment manager for another establishment under KRS 316.125(4) may act as the temporary establishment manager for the establishment under this section for the limited ninety (90) day period.

(b) The temporary establishment manager shall be identified to the board in writing by letter within fifteen (15) days of the death of the Kentucky-licensed owner, funeral director, or embalmer.

(c) A licensee may be the temporary establishment manager for only one (1) establishment at a time.

Section 8. Opening of an Establishment. (1) An establishment shall not operate or be opened for business prior to passing an inspection by the state board inspector and the issuance of an establishment license by the board for that establishment.

(2) To apply for an establishment license, the following shall be submitted to the board:

- (a) A completed Establishment Application;
 - (b) The fee required ~~by~~ as promulgated in 201 KAR 15:030 administrative regulations;
 - (c) A picture of the establishment and signage;
 - (d) A picture of the establishment manager;
 - (e) If purchasing the establishment, a certified copy of the property deed or other document demonstrating the property transfer and applicant's ownership;
 - (f) If a corporation, the articles of incorporation;
 - (g) If a partnership, the partnership agreement;
 - (h) If a limited liability company, the LLC agreement; and
 - (i) If the property is not owned by the applicant, a commercial lease, certificate of occupancy, or other legal document that demonstrates that the applicant has possession and control of the premises sufficient to be responsible for the property being configured to meet the requirements of these regulations.
- (3) Violation of this section shall be grounds for denial of the application for the license by the board.
- (4) All establishment licenses shall expire July 31 of each year. Establishments shall renew by submitting the following to the board:
- (a) An Establishment Renewal Application;
 - (b) The renewal fee established in KRS 316.130(4) and 201 KAR 15:030; and
 - (c) A list of all licensed funeral directors and embalmers affiliated with the establishment.

Section 9. Advertising and Signage. (1) An establishment shall use the exact name listed on the license for the establishment in all advertisements and signage.

(2) Descriptive terms shall be distinctly separated from the name of the establishment in all signage and advertisements unless registered as part of the official name.

(3) Any advertising, designation, or signage for the funeral establishment shall match the classification on the establishment's license.

Section 10. Closure of an Establishment. (1) If an establishment is to be closed, for any reason, the establishment licensee shall notify the board that the establishment is to be closed, and whether the closure is permanent or for a specified period of time.

(2) An establishment that is closing shall give notice of closure to the Office of the Attorney General together with a listing of any pre-need contracts that remain in effect for the closing establishment.

(3) The licensee for a closing establishment shall give written notice of closure to clients with whom the establishment has a pre-need contract, and shall include in that notice how the establishment intends to honor its contractual obligation.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Establishment Application", 9/2019;
- (b) "Information and Name Change Application", 9/2019; and
- (c) "Establishment Renewal Application", 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Rd, Ste 4, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

CHRISTI K. MOFFETT, Executive Director
APPROVED BY AGENCY: June 29, 2021

FILED WITH LRC: June 30, 2021 at 12:56 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on AUGUST 23, 2021 at 9:00 a.m., via ZOOM. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Christi Moffett, Executive Director of Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Road, Suite 4, Louisville, Kentucky 40222, phone 502.426.4589 fax 502.426.4117; email christik.moffett@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christi Moffett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation moves all fees into one regulation.

(b) The necessity of this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation brings all the fees into one regulation for easy access.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: All the fees will be located in one regulation

(b) The necessity of the amendment to this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation removes the inspection fees from 201 KAR 15:110, along with all fees and puts them all in one, easy to access regulation.

(d) How the amendment will assist in the effective administration of the statutes: Ease of use

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Moving all the fees into one regulation will make it easier for readers.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pay renewal or fee as defined

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Apprentices will pay \$75 per license

Establishments will pay the following based on their volume (case count)

Case Counts	Fee
99+	\$ 450
100-299	\$ 550
300-499	\$ 650
500+	\$ 750

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be legally licensed for a period of one year for establishments. Apprentice applications will be processed and presented to the board for consideration.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional cost

(b) On a continuing basis: No additional cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No special or additional funding will be required for implementation or enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: These fees are not increasing; just being moved to a single regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation gathers all the fees into one regulation. There is a fee increase for establishments based on case counts.

(9) TIERING: Is tiering applied? Yes,

Case Count	%	KBEFD Est	# Fees
99+	54%	275	\$ 450
100-299	40%	204	\$ 550
300-499	4%	20	\$ 650
500+	2%	10	\$ 750

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

Funeral Directors, Embalmers

Funeral Establishments and Embalming Services

Funeral Apprentices

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

201 KAR 15:030

KRS 316.030(4)(g)

KRS 316.030(5)(f)

KRS 316.125(2)(a)

201 KAR 15:040 Section 1(1)

201 KAR 15:040 Section 3(3)

201 KAR 15:040 Section 4(1)

201 KAR 15:050 Section 4(5)

201 KAR 15:110 Section 5(5)b

201 KAR 15:110 Section 5(5)c

201 KAR 15:110 Section 5(5)d
 201 KAR 15:110 Section 5(5)e
 201 KAR 15:125 Section 1(2)(b)
 201 KAR 15:125 Section 2(1)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? No additional cost to the agency

(d) How much will it cost to administer this program for subsequent years? No additional cost to the agency

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

PROPOSED

Case Calls	KBEFD Facilities	Fee	Income
99+	275	\$ 450	\$ 123,750
100-299	204	\$ 550	\$ 112,200
300-499	20	\$ 650	\$ 13,000
500+	10	\$ 750	\$ 7,500
			\$ 256,450

EXISTING

Existing	KBEFD Facilities	Fee	Income
Flat Fee	510	\$ 200	\$ 102,000

Expenditures: None

Other Explanations: None