

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

201 KAR 15:110. Funeral establishment criteria.

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), KRS 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~~[requires a license from the board for the operation of a funeral establishment]~~. 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.~~~~[Definitions. (1) "Chapel" means an area where a family and the public may pay their respects to a deceased human being, or an area where funerals or memorial services can be held, and which is a separate and distinct area from the preparation room.~~

~~—(2) "Preparation room" means an area with a minimum of 100 square feet, which is used exclusively to prepare dead human bodies for final disposition if arterial or cavity injection is a function of the establishment, and which is separate and distinct from the viewing area, chapel, or any other part of the establishment.~~

~~—(3) "Viewing area" means an area in which a family and the public may pay their respects to a deceased human being.~~

~~—Section 2.~~~~[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 which 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~~~~[A person shall not]~~ be permitted~~[to be]~~ in a preparation room during the course of embalming a dead human body:

~~(a)~~~~[except]~~ Employees of the establishment where~~[in which]~~ the human body is being embalmed;

(b)~~[;]~~ Registered apprentices;

(c)~~[;]~~ Members of the family of the deceased;

(d)~~[; or]~~ 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 which include~~[set out]~~:

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.~~[7]~~ The outer burial container price list;

3.~~[7]~~ The general price list;~~[7]~~ and

4. The statement~~[of funeral goods and services selected as]~~ 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~~[The funeral]~~ establishment shall maintain embalming reports and documentation of ~~[embalming]~~ authorization to embalm for a minimum of three (3) years.

(5)~~[A license for establishment shall not be granted for]~~ 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)~~(a)~~ An~~[Each]~~ establishment shall display a sign that:

(a)~~[which]~~ Identifies the name of the establishment; and~~[.]~~

(b) Is~~[The sign shall be]~~ in a location~~[that is]~~ visible from an adjacent public road.

(8) An establishment shall have adequate rest room facilities for members of the public ~~if~~~~[there will be]~~ public funeral services or visitation or ceremonial services will be conducted in the establishment.

Section 2~~[3]~~. Visitation and Ceremonial Funeral Service Establishment. An establishment that provides~~[All Visitation and Ceremonial Funeral Service Establishments that provide]~~ visitation and ceremonial funeral services shall have~~[facilities which meet the following requirements]~~:

(1)~~[The establishment shall have]~~ A viewing area or chapel which shall be at least 400 square feet in size; and

(2) The~~[establishment shall have 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~~[4]~~. Embalming Service Establishment. (1) An establishment that provides embalming services shall:

(a) Have facilities and a preparation room which comply with the requirements of the Occupational Safety and Health Act, 29 U.S.C. 651;

(b) Have~~[and shall also require]~~:

(a) at least one (1) approved embalming table and all professional instruments necessary for embalming and the preparation of dead human bodies; and

(c) Ensure~~(b)~~ 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~~[which]~~ 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~~5. Full Service Funeral Establishments. A full service funeral establishment shall have:~~[In addition to the regulatory requirements established in Sections 3 and 4 of this administrative regulation, a full service funeral establishment shall meet the following additional requirements:~~

(1)~~[The establishment shall have]~~ 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)~~[In addition to the viewing area or chapel, the establishment shall have]~~ 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~~6. Inspections. (1) Each establishment shall be subject to inspection at the convenience of the board inspector.

(a) Any 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 such 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 but not limited to KRS 316.150(1)(a), and 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~~, with a copy available to the inspector for the inspector's records]~~:

(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;~~and]~~

(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) Any establishment seeking an initial inspection for the purpose of obtaining a new license under KRS Chapter 316 may request such 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 for such 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) Any establishment licensed under KRS Chapter 316 which 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, payable to the board, of \$100. Such fee shall not be assessed more than one (1) time per calendar year.

(c) Any 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 such routine inspection, shall be assessed a re-inspection fee of \$200. 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) Any 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 for such inspection.

(e) If an establishment fails three (3) consecutive inspections within a period of six (6) months, any and all subsequent inspections required to determine whether such failure(s) have been cured shall require payment of a fee of \$200 for each such 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, 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~~⁷. Establishment ~~Manager~~^{Supervisor}. (1) Each~~[facility]~~ establishment shall have a Kentucky-licensed funeral director~~, and~~ a Kentucky-licensed embalmer~~, or~~ an individual licensee as required by KRS 316.125(2)(b)~~(5)~~ to manage and supervise the establishment~~[facility]~~.

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

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

Section ~~7~~⁸. 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 comes 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~~supervisor~~ for another establishment under KRS 316.125(4) may act as the temporary establishment manager~~supervisor~~ for the establishment under this section for the limited ninety (90) day period.

(b) The temporary establishment manager~~supervisor~~ 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~~[supervisor]~~ for only one (1) establishment at a time.

Section 8[9]. 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 these administrative regulations~~[201 KAR 15:030, Section 1];~~

(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~~[notarized letter from the seller];~~

(f) If a corporation, the articles of incorporation;

(g) If a partnership, the partnership agreement; ~~[and]~~

(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[40]. 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) At any time an establishment is to be closed, for any reason, the establishment licensee shall notify the board that such establishment is to be closed, and whether such closure is permanent, or for a specified period of time.

(2) Any 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 any 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", 2017;

(b) "Information and Name Change Application", 2017; 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.

HAROLD E. CORDER, Board Chair

APPROVED BY AGENCY: June 13, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on July 22, 2019 at 911 Leawood Drive, Frankfort, Kentucky 40601. 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 is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public 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 through 11:59 p.m. on July 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: David C. Trimble, General Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-3969, email davidc.trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes criteria for licensure as a funeral or embalming establishment.

(b) The necessity of this administrative regulation: KRS 316.125(1) requires a license from the board for the operation of a funeral establishment. 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.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 316.125(1) requires a license from the board for the operation of a funeral establishment. 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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 316.125(1) requires a license from the board for the operation of a funeral establishment. 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.

(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: The amendment establishes: requirement of funeral establishment to comply with federal public building re-

quirements; failure of an establishment to reasonably cooperate with inspections shall be deemed a violation; a schedule of fees to be charged for official inspections; change of the term "supervisor" to "Establishment Manager" to identify the licensee that supervises a particular establishment; and clarifies requirements for opening or closing an establishment.

(b) The necessity of the amendment to this administrative regulation: Changes have become necessary through daily operations of Board to comply with statutory requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 316.125(1) requires a license from the board for the operation of a funeral establishment. 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.

(d) How the amendment will assist in the effective administration of the statutes: KRS 316.125(1) requires a license from the board for the operation of a funeral establishment. 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.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky licenses over 500 funeral establishments.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Comply with federal public building requirements; reasonably cooperate with inspections; comply with requirements for "Establishment Manager"; comply with requirements for opening or closing an establishment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The cost of compliance will vary depending on what inspections an entity is seeking and whether the board has to re-inspect following findings of deficiencies.

(c) As a result of compliance, what benefits will accrue to the entities: Avoid federal fines or litigation for non-compliance with public accommodation laws; maintain proper inspection status; establishments properly supervised; timely notifications to Board of opening or closing establishments.

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

(a) Initially: Implementation of this amendment is not anticipated to have a cost for the board.

(b) On a continuing basis: Continued implementation of this amendment is not anticipated to have a cost for the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: License fees will be used to fund implementation and enforcement of this amended administrative regulation.

(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: This amendment does not increase fees; it establishes new fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes fees for inspections of board licensees.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation

applies equally to all licensees.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Occupational Safety and Health Act, 29 U.S.C. 651

(2) State compliance standards. There are multiple OSHA standards which may apply to funeral and embalming establishments, including but not limited to standards for public buildings, and standards for storage and use of embalming chemicals.

(3) Minimum or uniform standards contained in the federal mandate. Federal mandate addresses the facilities and preparation room.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None.

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? The Kentucky Board of Embalmers and Funeral Directors will be affected.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 316.125(1) requires a license from the board for the operation of a funeral establishment. 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.

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

(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? This administrative regulation is expected to generate \$30,000 - \$35,000 for the Board from inspection fees. This regulation will not generate revenue for local government.

(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? This administrative regulation is expected to generate \$30,000 - \$35,000 for the Board from inspection fees. This regulation will not generate revenue for local government.

(c) How much will it cost to administer this program for the first year? The board will need to procure new software for invoicing inspection fees; the cost has not yet been determined.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, the board does not anticipate additional costs to administer this program unless the board determines there is a need to hire additional inspectors.

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

Revenues (+/-): + \$30,000 - \$35,000

Expenditures (+/-): Neutral

Other Explanation: None