

WHEN BARRIERS BECOME BRICK WALLS: BREAKING DOWN BARRIERS TO SOLVE THE FUNERAL DIRECTOR SHORTAGE

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INTRODUCTION

The funeral industry is dying by a slow and steady lack of progressivism. It has remained stagnant and guided by old laws and regulations for the last 150 years.¹ This has led to a fundamental difference between what consumers want and what the funeral industry can give.² Despite the funeral industry affecting all Americans and being worth nearly \$20 billion, lawmakers overlook the need for change because of the discomfort surrounding death.³ The industry is highly regulated to a point that keeps out willing participants.⁴ There are around 5,700 funeral director job openings

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1. Tanya D. Marsh, *Regulated to Death: Occupational Licensing and the Demise of the U.S. Funeral Services Industry*, 8 WAKE FOREST J.L. & POL'Y 5, 8 (2018).

2. *Id.* at 21–22.

3. Sara Marsden-Ille, *The US Funeral Industry Today*, US FUNERALS ONLINE (Mar. 22, 2023), <https://perma.cc/5CCC-52F2>.

4. *NJSFDA Opposes Bill That Would Create a Funeral Arranger License Category*, 15 MEM'L BUS. J. 5, 5–6 (2024) [hereinafter *NJSFDA Opposes Bill*].

per year,⁵ and only about 1,600 mortuary school graduates per year.⁶ In addition to the small subset of people willing to work as funeral directors, more than 60% of funeral home directors are expected to retire within the next five years.⁷ These factors are leading to an employment crisis in the industry where the United States will severely lack enough funeral directors to meet the demand of over three million deaths a year.⁸ The role of a funeral director is vital to the United States deathcare system because most states give licensed funeral directors the sole legal responsibility for the disposition of the deceased.⁹ The industry has regulated itself into a precarious position that can be righted by breaking down barriers to entry for those willing to become funeral directors.

This Essay will explain the barriers to entry in the funeral profession that have led to a shortage of funeral directors and propose a variety of solutions, from modifying licensing requirements to changing mortuary schools in order to increase the pool of qualified people interested in working in the deathcare industry. By increasing the amount of qualified and willing candidates to become funeral directors, Americans confronting their darkest days and the face of death will be better cared for by the funeral industry.

I. BARRIER ONE: FUNERAL DIRECTOR LICENSING

One major barrier to entry to becoming a funeral director is the single-license regime in many states that requires funeral directors to be embalmers. The power of the state allows it to set licensing requirements for individuals who wish to practice in certain trades and professions.¹⁰ Occupational licensing is the primary way through which the funeral industry is regulated.¹¹ Nearly every state in the country has enacted licensing laws for funeral director positions.¹² Typically, those seeking to work as funeral directors must achieve a certain educational level, meet the minimum age, have evidence of good character, undergo specialized training, meet requisite

5. *Occupational Outlook Handbook: Funeral Service Workers*, U.S. BUREAU LAB. STAT. (Apr. 17, 2024), <https://perma.cc/L638-Z36A>.

6. *Another Record-Breaking Year for Funeral Service Education Enrollment*, 14 MEM'L BUS. J. 1, 1 (2023) [hereinafter *Another Record-Breaking Year*].

7. Bridget Frame, *More Than 60% of Funeral Directors Nationwide Are About to Retire. Do You Want This Job?*, CAROLINA NEWS & REP. (Apr. 20, 2023), <https://perma.cc/Y24L-4GR2>.

8. Farida B. Ahmad et al., *Provisional Mortality Data—United States, 2022*, CDC (May 5, 2023), <https://perma.cc/TDR3-G9EU>.

9. Marsh, *supra* note 1, at 7.

10. *Goldfarb v. Va. State Bar*, 421 U.S. 773, 792 (1975).

11. TANYA MARSH, *THE LAW OF HUMAN REMAINS* 67 (2016).

12. *Id.* at 71.

experience, and obtain licenses from the state.¹³ States approach licensing of the funeral industry in three different ways.¹⁴ The first way is licensing funeral directors and embalmers separately.¹⁵ The second way is issuing a single license that includes both sets of activities, thus requiring funeral directors to be embalmers.¹⁶ The third way is licensing only embalmers.¹⁷ About nineteen states explicitly require that funeral directors have embalming training or experience.¹⁸ Additionally, all but two states require an apprenticeship that is likely to include embalming training or experience.¹⁹ This Section will focus on eliminating the single-license scheme that requires funeral directors to be embalmers in order to broaden the number of qualified applicants interested in becoming funeral directors.

Embalming has been a traditional aspect of American funeral practices since the Civil War, yet it is at an all-time low.²⁰ In the nineteenth and twentieth centuries, after a person died the process was as follows: the body was taken to a funeral establishment, the remains were washed, embalmed, and dressed, there was an open casket viewing, a ceremony was held at a funeral establishment or church, and the casket was taken to a cemetery by the funeral director where the body was interred.²¹ Embalming was a vital aspect of the process since most families chose to have open-casket funerals.²² Embalming is a process that preserves the body after death. It is an intense, hands-on process by which the body is washed in a disinfectant solution, the limbs are massaged to relieve muscle stiffness, the eyes are glued shut, the lower jaw is secured by wires or sewing, the blood is removed from the body and replaced with formaldehyde and other chemicals, and the organs in the chest and abdomen are punctured and drained of gases and fluids.²³ The body is then cosmetically transformed to look like a living body resting in peace.²⁴

13. *Id.*

14. Marsh, *supra* note 1, at 18.

15. *Id.*

16. *Id.*

17. *Id.*

18. INT'L CONF. OF FUNERAL SERV. EXAMINING BDS., REGULATIONS IN FUNERAL SERVICE LICENSING 4–22 (2023), <https://perma.cc/43ZQ-4QGV>.

19. Marsh, *supra* note 1, at 19.

20. *Id.* at 5, 9.

21. MARSH, *supra* note 11, at 59.

22. *Id.*

23. Tania Tack, *The Embalming Process*, BASIC FUNERALS & CREMATION CHOICES (Aug. 1, 2017), <https://perma.cc/D8JQ-W92F>.

24. *Id.*

Open casket funerals are becoming a tradition of the past with only 27% of people choosing open casket preparation.²⁵ Embalming is never necessary for closed casket funerals or other methods of disposition like cremation, and it is not necessary for open casket viewings so long as state regulations regarding timing are followed.²⁶ Yet, the funeral industry's occupational licensing regime continues to center on the importance of embalming. It is well documented that requiring funeral directors to be certified in embalming decreases the subset of people willing to become funeral directors.²⁷

As embalming becomes less popular, cremation is swiftly becoming the most prevalent form of disposition. In 2023, the cremation rate was 60.5%.²⁸ By 2035, the national cremation rate is forecasted to reach 80%.²⁹ Cremation does not require embalming, and in fact the Federal Trade Commission requires that funeral directors "disclose that embalming is not required by law."³⁰ There is no reason to maintain a regulatory scheme that revolves around embalming when in the next ten years 80% of people will choose cremation as their method of disposition.

Cremation is not the only form of disposition gaining popularity and making embalming less relevant for licensing. Green burial, alkaline hydrolysis, and natural organic reduction are also becoming more popular. A survey by the National Funeral Directors Association found that nearly 54% of Americans are considering a green burial, and 72% of cemeteries are reporting an increased demand for green burials.³¹ Green burial seeks to minimize negative environmental effects by forgoing embalming, lining, and vaults, using

25. Alex Noel, *Are Open Casket Funerals Common? Full 2022 Guide*, 4FUNERAL (2022), <https://perma.cc/6S5D-72EN>.

26. *Embalming: Do I Have To?*, MCMULLEN FUNERAL HOME & CREMATORY (Jan. 6, 2023), <https://perma.cc/GJW7-NUJ8>.

27. Marsh, *supra* note 1, at 20 (noting that states which require funeral directors to be embalmers have 17% fewer funeral directors per capita than states which provide for dual licenses); Wake Forest University, *The Future of Death Care in America 2024 Symposium: Panel 2 – Licensing Funeral Directors*, YOUTUBE (Mar. 7, 2024), <https://perma.cc/8W3L-USTD> (explaining that Arizona's funeral directors increased by 5.9% after it instituted a universal license former requirement that demanded licensed funeral directors to also hold an embalming license—because they could now move into Arizona and be a funeral director without being an embalmer).

28. *U.S. Cremation Rate Expected to Top 80% by 2045*, NAT'L FUNERAL DIRS. ASS'N (Sept. 1, 2023), <https://perma.cc/L7UA-ZQFB>.

29. *Id.*

30. FED. TRADE COMM'N, *COMPLYING WITH THE FUNERAL RULE 3* (2019), <https://perma.cc/S2R6-5F6H>.

31. Sonya Vatomsky, *Thinking About Having a 'Green' Funeral? Here's What to Know*, N.Y. TIMES (Mar. 22, 2018), <https://www.nytimes.com/2018/03/22/smarter-living/green-funeral-burial-environment.html>.

biodegradable containers, and maintaining natural habitats.³² Alkaline hydrolysis, also known as water cremation, is a more environmentally sound alternative to cremation. During alkaline hydrolysis, the body is dissolved in a water-based solution.³³ The process consumes “approximately 10 percent of the energy required to cremate a body in flame,” making it more environmentally sound.³⁴ Natural organic reduction, also known as human composting, is becoming quickly legalized and accepted as a new form of disposition. “Natural organic reduction is the transformation of a human body into soil.”³⁵ The deceased body is put into a stainless steel vessel with wood chips, alfalfa, and straw.³⁶ Microbes that naturally occur in our bodies and this material then transform the body into soil over five to seven weeks.³⁷ This soil can then be used by loved ones or donated to conservation efforts.³⁸ Natural organic reduction has been legalized in twelve states since its development in 2020, which is a shockingly fast change in the funeral industry.³⁹ This quick legalization and acceptance of new, more natural forms of disposition is evidence of the public’s shifting views away from traditional death care that relies on embalming. The growing popularity of new forms of disposition that do not require embalming shows the nonessential nature of a single license to become a funeral director.

The emphasis put on embalming for funeral directors is neither reasonable nor rational, and it only serves to decrease the pool of qualified candidates willing to become funeral directors. The current “occupational licensing regimes artificially support an industry designed to sell a product that most Americans no longer want.”⁴⁰ It is more practical to split the licensing requirements to allow people to be certified as funeral directors without being certified as embalmers. Creating multiple licenses allows funeral directors to take a path that is more aligned with current deathcare practices instead of a path based on outdated traditions. Funeral homes that decide to offer embalming will still be able to hire licensed embalmers. Under a dual license regime, the choice to hire a funeral director who is also an embalmer is a business decision that can be freely chosen instead of a licensing regime that is forced upon businesses. As new forms of

32. *Green Burial Defined*, GREEN BURIAL COUNCIL (2023), <https://perma.cc/2KH8-V2VW>.

33. Lauren Oster, *Could Water Cremation Become the New American Way of Death?*, SMITHSONIAN MAG. (July 27, 2022), <https://perma.cc/2FXP-UV62>.

34. *Id.*

35. *Our Model*, RECOMPOSE (2024), <https://perma.cc/XF29-DT2X>.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Tracker: Where Is Human Composting Legal in the US?*, EARTH FUNERAL (Aug. 9, 2022), <https://perma.cc/AJ3V-DQYS>.

40. Marsh, *supra* note 1, at 26.

disposition are created and become more popularized, funeral homes should have the choice of what services they offer and what employees they hire. If a funeral home chooses to only offer forms of disposition that do not require embalming, then the funeral director should not have to spend the time and money to become a licensed embalmer.

The job of many funeral directors is to be a caretaker, confidant, and guide to help the family and friends of the deceased. This type of work is appealing to people in the same way as counseling, teaching, nursing, or social work. The job of a funeral director is more than disposing of bodies. Funeral directors are pillars of their communities who are relied upon to guide people through grief and dark times. Those interested, qualified, and willing to join this profession should not be prohibited because they do not want to engage closely in the embalming process. Unfortunately, “under the current licensure framework, the profession may be missing individuals who may be excellent funeral directors—people who are empathetic, patient, creative, great listeners and communicators, organized, flexible and familiar with traditions and customs.”⁴¹ By removing the embalming requirement from funeral director licensing, a larger pool of qualified applicants interested in a caretaking career will emerge. “Expanding the universe of qualified applicants for licensure would address the critical labor shortage in the funeral industry.”⁴² This will change the culture of the funeral industry by making deathcare services more readily available and in line with modern deathcare practices.

II. BARRIER TWO: SCHOOLING REQUIREMENTS AND PROFIT MARGINS

The schooling requirements to be a licensed funeral director are long and expensive compared to expected income. In most states, becoming a licensed funeral director requires attending an accredited mortuary school that is recognized by the American Board of Funeral Service Education in addition to an associate degree or some extent of four-year college credit.⁴³ The average cost of attending mortuary school is around \$25,000.⁴⁴ Upon completion of formal education at an accredited mortuary school, graduates must complete an apprenticeship under the supervision of a licensed funeral director that pays minimally.⁴⁵ Under the current licensing regime, funeral directors are required to pay significant money for a degree with a low

41. *NJSFDA Opposes Bill*, *supra* note 4, at 6.

42. *Id.*

43. Ilana Kowarski, *How to Become a Mortician, Embalmer or Funeral Director*, U.S. NEWS (Mar. 4, 2022), <https://www.usnews.com/education/best-colleges/applying/articles/mortuary-school-how-to-become-a-mortician-embalmer-or-funeral-director>.

44. *Mortuary School: Your Complete Guide*, TULIP CREMATION (2024), <https://perma.cc/KUM2-TK8L>.

45. STATE OF THE PROFESSION REPORT: FUNERAL HOME COMPENSATION 4, 8 (Kates-Boylston Publication ed., 2022).

national median income that does not reflect the time and expense put into gaining access into the profession.

Many graduates will be forced to take on debt in order to receive a degree from an accredited mortuary school, and this debt will be compounded by their low-paying apprenticeships. Twenty percent of newly licensed full-time funeral directors make between \$35,001 and \$45,000.⁴⁶ Nearly 14% of newly licensed funeral directors make between \$25,001 and \$35,000.⁴⁷ Only 14.3% of newly licensed funeral directors make over \$55,000.⁴⁸ One study found that “when it comes to anticipated annual salary, students expect to make 40% more than employers intend to pay them (\$59,968 and \$42,654, respectively).”⁴⁹ The Department of Labor’s Bureau of Labor Statistics divides the funeral industry into four categories with their median incomes: (1) embalmers, \$54,120; (2) crematory operators, \$43,120; (3) funeral attendants, \$34,340; (4) morticians, undertakers, and funeral arrangers, \$58,430.⁵⁰ The morticians, undertakers, and funeral arrangers category broadly describes the funeral director position.⁵¹ This category is not making significantly more than the national median income of the funeral attendants and crematory operators.

In other specialized professions requiring additional schooling and expenses, the specialist earns a significantly higher income than those they employ.⁵² For example, doctors, lawyers, and accountants make significantly higher incomes than their nurses, paralegals, and assistants.⁵³ These professions require additional schooling, expense, and dedication, and this extra pursuit is awarded with a higher income. The salaries of funeral directors and embalmers are comparable to the mean annual salary for all United States industry sectors, yet funeral directors are subject to arduous and expensive barriers to entry.⁵⁴

The profitability of funeral homes is small and decreasing,⁵⁵ which makes it unappealing to spend significant money on schooling in order to enter a low-yield profession. Low profitability is especially problematic for graduates intending to own their own funeral homes

46. *Id.* at 8.

47. *Id.*

48. *Id.*

49. Deana Gillespie & Edward J. Defort, *Finding Good Help Tops Profitability as Greatest Challenge for Owners*, 13 MEM’L BUS. J. 1, 3 (2022).

50. *National Occupational Employment and Wage Estimates*, U.S. BUREAU LAB. STAT. (May 2022), <https://perma.cc/W66S-XNR8> (looking at funeral industry statistics).

51. *Occupational Employment and Wages: 39-4031 Morticians, Undertakers, and Funeral Arrangers*, U.S. BUREAU LAB. STAT. (May 2023), <https://perma.cc/6L3X-86HM>.

52. *Id.*

53. *Id.*

54. Marsh, *supra* note 1, at 15.

55. *Id.* at 14.

but who are not part of funeral families.⁵⁶ Traditionally, funeral homes have been small businesses passed on through generations of sons who have become funeral directors to maintain the family business.⁵⁷ Many mom-and-pop funeral homes are old cornerstones of communities and take up valuable real estate. The average cost of buying a new funeral home or purchasing an existing one ranges between \$2 million and \$4 million.⁵⁸ Further, the initial cost of starting up a medium-sized funeral home is \$450,000 because state regulations require funeral homes to have certain amenities and equipment.⁵⁹ Even in dual license states, funeral homes are heavily regulated and “many states require a minimum square footage, or require a fully outfitted embalming room, or a chapel, or a casket display room, or all of the above.”⁶⁰ This is true despite the services the funeral home offers. For example, funeral homes that only offer cremation, green burial, or human composting are typically required to have embalming and casket rooms despite not offering these services.⁶¹ The likelihood of a funeral director being able to afford this is extremely implausible. With more than 60% of funeral home directors expected to retire within the next five years, the funeral industry is facing a serious problem.⁶²

For many people seeking to enter the funeral profession, debt will be a likely consequence of attending mortuary school. This debt will be exacerbated by a low-paying required internship and a job with an average median income. The long and expensive barrier that mortuary school poses is unnecessary for the success of the profession. Similar to licensing requirements, mortuary school is based on the outdated notion that funeral directors must be embalmers. State licensing requirements, especially in dual license states, perpetuate the need for mortuary schools that focus on embalming.

One solution to break down the cost and time aspect of the schooling barrier is to allow people seeking a single funeral director license that does not include embalming to be allowed as a licensed funeral director if they have an undergraduate or associate’s degree in a relevant area to the profession. For example, a psychology or business bachelor’s degree could be enough to obtain a single license in funeral directing, or a biology degree with a certain number of hours as an embalming apprentice could be enough to obtain a dual license. Another solution is to allow people with GEDs to take certain

56. *Id.* at 20.

57. *Id.* at 11.

58. *Id.* at 21.

59. Brenna Swanston, *How Much Does It Cost to Start a Funeral Home?*, CHRON.: SMALL BUS. (Mar. 1, 2019), <https://perma.cc/BRD4-N47R>.

60. David E. Harrington, *Markets: Preserving Funeral Markets with Ready-to-Embalm Laws*, 21 J. ECON. PERSPS. 201, 202 (2007).

61. *Id.*

62. Frame, *supra* note 7.

courses designated by the state's funeral service board to be able to obtain a single funeral director license. This would provide those who are interested in directing and managing the funeral home a more streamlined and affordable route into the industry. Embalmers and those involved in actual human disposition could still be required to go to mortuary school to study the necessary sciences. However, a less expensive and more reasonable licensing route should be carved out for funeral directors not engaging in the sciences of human disposition. These solutions would help break down the schooling barrier and incentivize capable, educated, and interested people to join the field and fill desperately needed positions.

III. BARRIER THREE: THE APPRENTICESHIP

The American Board of Funeral Service Education requires a funeral director to work as an apprentice for one to three years, depending on state licensing requirements.⁶³ Every state except California and Wyoming requires funeral director applicants to complete an apprenticeship with a licensed funeral director.⁶⁴ Apprentices work in funeral homes under the supervision of licensed providers to gain hands-on experience.⁶⁵ Apprentices make less money than licensed funeral directors, which is a barrier into the profession.⁶⁶ Many people cannot afford mortuary school tuition only to enter a job that pays nearly minimum wage for up to three years. The 2022 edition of the *State of the Profession Report: Funeral Home Compensation* found that 51% of funeral home respondents said they pay sixteen to twenty dollars per hour, and this is three percentage points higher than the previous year.⁶⁷ The percentage of firms that paid more than twenty dollars per hour increased from about 14% last year to 25% this year. Twenty-four percent of funeral homes only pay ten to fifteen dollars per hour.⁶⁸ Despite salaries increasing, these statistics show a long-standing trend of extremely low pay for apprentices. It is an unsustainable model of regulation to require funeral directors to pay an average of \$25,000 just to enter an additional one to three years of low-income work.

The money barrier that the apprenticeship poses has the effect of only allowing those with a strong, known passion for death care to enter the industry. In the current state of the regulatory system, potential funeral directors must commit to expensive schooling and low-paying apprenticeships to become licensed, when instead they could enter thousands of other jobs with no barriers to entry that pay

63. Marsh, *supra* note 1, at 19.

64. *Id.*

65. *Id.*

66. STATE OF THE PROFESSION REPORT, *supra* note 45, at 8.

67. *Id.*

68. *Id.*

the same salary. This is evidenced by a study that found that 27.4% of funeral directors who quit left because of compensation issues.⁶⁹ This figure jumped from 6.5% in 2016, to 11.5% in 2019, to 27.4% in 2024.⁷⁰ This must change to solve the employment crisis facing the industry.

Apprenticeships can be difficult to obtain for various reasons. First, funeral homes are traditionally run by older males.⁷¹ In 2004, only 10% of the National Funeral Directors Association's members were women, which leads to the obvious inference that most funeral home owners are men.⁷² As of 2022, "the number of women entering funeral service programs is more than two-and-a-half times the number of men—72.1% to 27.9%."⁷³ Despite increasing numbers of female graduates, it is uncommon for women to own and operate funeral homes.⁷⁴ The funeral industry is a traditional one that is slow to change and accept criticism.⁷⁵ A widely-known issue in the industry is the treatment of women.⁷⁶ Women have reported finding it difficult to break into the industry because of stereotypes about "not being strong enough to lift coffins, or worries about exposing pregnant workers to embalming chemicals, [which] make some male funeral home owners reluctant to hire women."⁷⁷ For these reasons, women have reported difficulty finding apprenticeships, stating their gender

69. Gillespie & Defort, *supra* note 49, at 4.

70. *Id.*

71. Rosie Colosi, *This Millennial Mortician Is Changing the Face of the Traditional Funeral Industry*, MSNBC: HEALTH & MINDSET (Oct. 16, 2019), <https://perma.cc/792S-VY8M>.

72. Alexandra Jo, *Gender Dominance in Funeral Service Is Changing*, NFDA: BLOG (May 27, 2021), <https://perma.cc/YTW8-WUPT>.

73. Hollie Lewis, *Why More Women Than Men Are Now Going to Mortuary School*, WSAV (Sept. 21, 2022), <https://www.wsav.com/now/why-more-women-than-men-are-now-going-to-mortuary-school/>.

74. Jennifer Trudeau, *Are Women-Owned Funeral Homes Different?*, CONNECTING DIRS. (Jan. 25, 2022), <https://perma.cc/5RBE-JGJW>.

75. Marsh, *supra* note 1, at 11.

76. See *Another Record-Breaking Year*, *supra* note 6, at 5 ("Growth in the number of females pursuing careers in funeral service has been a reality for more than two decades. Public perceptions of a typical funeral director seem to be more realistic than the perceptions of many employers."); Sarah Taddeo & Katie Sullivan Borelli, *How Women Are Changing the Funeral Industry*, DEMOCRAT & CHRON. (Mar. 23, 2018), <https://perma.cc/5DS5-WEDB> (recounting a woman's story about how, "[d]uring her college career, she was turned away from doing a 5-week practicum stint at the funeral home across the street from her childhood home because the management thought there 'should be no need for females in funeral service' One funeral director advised her, 'women don't do this,' and she was repeatedly told to get a different degree.").

77. Ted Shaffrey, *Death Becomes Her: Women Make Inroads in Funeral Industry*, AP NEWS (Nov. 27, 2018), <https://apnews.com/article/80d5b988f9ac4f279ee60b4fb51a79f4>.

as a main “strike” against them.⁷⁸ This juxtaposition between primarily male-owned funeral homes and men in positions of power within the industry versus the exploding numbers of women graduating from mortuary school and needing apprenticeships is now a barrier facing the majority of mortuary school graduates.⁷⁹

Second, some states have rapidly increasing amounts of mortuary school graduates, which is flooding the market with graduates who need apprenticeships. There are only so many funeral homes in each state for apprentices to work, which makes finding an apprenticeship difficult. Funeral homes are not required to hire apprentices, but every person seeking to become a licensed funeral director is required to independently find an apprenticeship.⁸⁰ Funeral homes already have profitability issues that dissuade funeral directors from hiring unlicensed interns to work in their funeral homes.⁸¹ For example, Texas had 407 new mortuary school enrollees in 2022.⁸² All 407 graduates will need to find an apprenticeship in order to become a licensed funeral director. Texas only has 1,018 funeral homes, which are all spread throughout the massive state.⁸³ Likely, not all 1,018 funeral homes offer apprenticeships, which puts a financial strain on the homes that do offer apprenticeships and makes apprenticeships unfairly competitive to find.

Once again, the barrier of embalming rears its head. Many interns will find themselves in apprenticeships that require them to participate in or closely observe embalming. Unfortunately, because of the desperate nature of finding an internship, apprentices will find themselves in close contact with embalming whether the state is single or dual license and whether the intern plans to embalm once they become a licensed funeral director. Finding an apprenticeship is difficult and finding one within the bounds of the apprentice’s interest areas may be impossible. An intern who plans to only engage in human composting, green burial, alkaline hydrolysis, or cremation should not have to spend years embalming in an apprenticeship. This is not only a barrier to finding an apprenticeship that matches an

78. Hannah LaClaire, *Death Becomes Her: The Future of Funeral Home Work Is Female*, PORTLAND PRESS HERALD (Dec. 2, 2023), <https://perma.cc/C763-VRV3>.

79. Shaffrey, *supra* note 77 (“[D]irector of the funeral services program at SUNY Canton, said that . . . women face other barriers when entering the profession, like low pay and impatient bosses during residency training,” and “[i]f the current generation of funeral home owners don’t start taking and treating women with the respect and dignity that they deserve, there is going to be a time to pass on the funeral home, and there is going to be no one there to buy it.”).

80. Marsh, *supra* note 1, at 19.

81. See Madison Hall, *Rising Costs, Declining Demand, Massive Consolidation and Government Scrutiny: The Death Industry Is Changing, Maybe for Good*, BUS. INSIDER (Aug. 3, 2023), <https://perma.cc/85CB-MUD2>.

82. *Another Record-Breaking Year*, *supra* note 6, at 6.

83. *Funeral Industry Statistics: A State by State Look*, FUNERALWISE, (2024), <https://perma.cc/H9QP-GMHC>.

intern's preferences, but it is also a barrier to becoming a funeral director in general. One study found that 67% of men and 60% of women aged eighteen to twenty-nine would consider a course or profession in funeral service if they did not have to embalm.⁸⁴ Apprenticeships end up forcing potential funeral directors who do not want to engage with embalming to spend years embalming to become licensed. This is a zealous regulation resting on the incorrect assumption that embalming is the centerpiece of the American funeral system.

One solution to the apprenticeship barrier would be to run externship programs through mortuary schools. This would shift the burden from students having to independently find apprenticeships to the schools. It would also allow the schools to provide embalming-free externship options to students in dual-license states who have no interest in obtaining an embalming license. This is a more tailored approach that puts the burden on mortuary schools and tailors the externships to the preferences of the students and state licensing requirements. It would also be beneficial to limit the timeframe of the apprenticeship. Having to make a lower rate of pay for up to three years after graduating from mortuary school to become licensed is not necessary. The point of the apprenticeship is to gain practical experience from working at a funeral home that will prepare them for their future jobs. A one-to-three-year apprenticeship is overkill in achieving this goal, particularly for apprentices who do not plan on opening their own funeral home. Additionally, if practical experience is the goal of the apprenticeship, then it has already been undermined by forcing apprentices to work at whatever funeral home will offer them an apprenticeship even if it is at complete odds with the path they plan to take in their career. For example, an apprentice working at a small mom-and-pop funeral home that focuses on embalming is not gaining relevant experience if they plan to open a funeral home that only engages in human composting. Shortening the timeframe and shifting the burden of finding the apprenticeship onto mortuary schools will help promote the purpose of the apprenticeship in a more productive and streamlined manner.

IV. BARRIER FOUR: THE NATIONAL BOARD EXAM

The National Board Exam (NBE) poses a significant barrier to entry into the funeral industry. Passing the NBE is required to become a licensed funeral director in nearly every state.⁸⁵ The NBE, administered by the International Conference of Funeral Service Examining Boards, consists of two 170-question tests that cost \$285

84. Marsh, *supra* note 1, at 20.

85. INT'L CONF. OF FUNERAL SERV. EXAMINING BDS., 2021 ANNUAL REPORT (2022), <https://perma.cc/BWP6-L9WH>.

each.⁸⁶ One test is on “Arts,” and the other test is on “Sciences.” The Arts test covers funeral arranging and directing, funeral service marketing/merchandising, legal and regulatory compliance, cemetery and crematory operations, and funeral service counseling.⁸⁷ The Sciences test covers embalming, restorative arts, preparation for disposition, and funeral service sciences.⁸⁸ Since many states are single-license states that require both tests, the NBE will cost \$570. In addition, a practice Arts or Sciences test costs \$60 each.⁸⁹ These prices add up to an expensive barrier for potential funeral directors who have already spent thousands of dollars in tuition and schooling fees.

Additionally, the NBE has a low passage rate that is preventing people who have passed their classes at mortuary school from entering the profession. The passing score is a 75%.⁹⁰ In 2023, the passing rate for first-time test takers was 78% for the Arts test and 69% for the Sciences test.⁹¹ The passing rate in 2023 for people retaking the Arts test was 44%, and the passing rate for retaking the Sciences test was 33%.⁹² This is an improvement compared to 2021, when the passing rate for first-time test takers was only 68% for the Arts test and 57% for the Sciences test.⁹³ However, improving NBE scores incrementally is not enough to break down the NBE as a barrier to enter the funeral industry.

The NBE is unnecessarily difficult, as evidenced by its low passage rate despite test takers being required to have graduated from an accredited mortuary school. Memorizing facts and figures that do not play a fundamental role in everyday funeral directing or require memorization is unnecessary. In a study that asked funeral directors what changes they would recommend to funeral service school course requirements, the top suggested changes were customer service, people skills, common sense, work ethic, appearance, demeanor, communications skills, and directing skills.⁹⁴ None of these qualities can be addressed in a standardized test. These attributes can only be taught in school and then subsequently tested and learned on the job. Additionally, the Sciences test should only

86. Peter Rench, *Funeral Service Practice Test*, MOMETRIX TEST PREP. (Jan. 29, 2024), <https://perma.cc/JCC5-87L3>.

87. *Id.*

88. *Id.*

89. *Find Your Question Below*, INT’L CONF. FUNERAL SERV. EXAMINING BDS. (2024), <https://perma.cc/Q5VU-MDH9> (scroll down to “Practice Exams” and select “What is the cost per form?”).

90. Rench, *supra* note 86.

91. INT’L CONF. OF FUNERAL SERV. EXAMINING BDS., 2023 ANNUAL REPORT 6 (2024), <https://perma.cc/6PVM-NYAJ>.

92. *Id.*

93. INT’L CONF. OF FUNERAL SERV. EXAMINING BDS., *supra* note 85.

94. Gillespie & Defort, *supra* note 49, at 4.

ever be required for a funeral director who plans to engage in embalming and restorative arts, even in single-license states. However, it could also be argued that the Sciences test should never be required because mortuary school and the apprenticeship is enough to properly train embalmers and those using restorative arts.

Mortuary schools are already regulated and accredited by the American Board of Funeral Service Education, and an apprenticeship is required for licensing. An additional exam prevents funeral director licensing without tipping the scales toward consumer protection. In one study, 84.2% of responding funeral homes “cited the availability of qualified personnel as the greatest challenge facing funeral service, a significant increase from 73.9% in 2019 and 58.2% in 2016.”⁹⁵ The funeral industry is desperate for funeral directors, but the NBE prevents people invested in joining the profession from doing so.

CONCLUSION

Putting the pieces together, a young entrepreneur who has graduated from mortuary school and wants to open a funeral home would have to invest two years and \$25,000 in mortuary school, pass the NBE for upwards of \$570, work up to three years as an apprentice making nearly minimum wage, and invest \$2 million to \$4 million to buy and open a funeral home—only to earn \$45,000 a year.⁹⁶ The modern American funeral service industry “is unsustainable. It is running out of time. It has been regulated to death.”⁹⁷ Barriers to enter the profession are becoming brick walls. The occupational licensing regime currently in place severely limits growth, innovation, and interest in joining the funeral industry. It enforces expensive barriers that emphasize embalming and restorative arts despite consumer demand for embalming decreasing.⁹⁸ The system is resting on unjustifiable excuses that breaking down barriers will “upend more than 70 years of public policy.”⁹⁹

Consumer protectionism is undoubtedly important, especially for funeral care consumers who are in vulnerable positions facing their darkest days. It is time to accept that consumers are not being protected by existing regulations. These “occupational licensing regimes artificially support an industry designed to sell a product that most Americans no longer want.”¹⁰⁰ Worse, they prevent good people from entering the industry, and they are on the road to preventing Americans from accessing the funeral services they expect

95. *Id.* at 1.

96. Marsh, *supra* note 1, at 20–21.

97. *Id.* at 27.

98. See generally David E. Harrington & Jaret Treber, *Numbers Matter: Estimating the Cost of State Funeral Regulations*, 8 WAKE FOREST J.L. & POL'Y 29 (2018).

99. *NJSFDA Opposes Bill*, *supra* note 4, at 5.

100. Marsh, *supra* note 1, at 26.

and deserve. The solutions suggested in this Essay are meant to act as a starting point in solving the severe shortage of funeral directors. The barriers to entry to becoming a funeral director, including licensing requirements, schooling requirements, the NBE, and the apprenticeship, are all fixable problems if the industry is willing to accept the progressive reality of the funeral industry.