

Are State Funeral Regulations Burying Online Casket Sales?

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Introduction

Important changes are occurring in funeral markets, including the sale of caskets over the Internet and the growing popularity of cremation. Important changes will also occur over the next few decades as we say good-bye to the baby-boomers. However, one feature of funeral markets has changed very little over the last half century: the stringent regulation of these markets by many states. This raises several questions that are explored in this essay. What effect do state funeral regulations have on the changes that are occurring within funeral markets? In particular, are state funeral regulations impeding funeral market innovations, such as buying caskets over the Internet? If so, what would be the benefit to consumers of ensuring that these innovations are not impeded by state funeral regulations?

Anticompetitive Effects of State Funeral Regulations

Asking someone familiar with state funeral regulations whether these regulations are burying online casket sales is likely to elicit a response like, “Of course they are.” You need only read the relevant state statute for Georgia, which says that “funeral merchandise... may only be sold or offered for sale by a funeral director working in a funeral establishment.” It leaves little or no opening for online casket sales by further saying that funeral merchandise “includes, but is not limited to, a casket.”¹ A more difficult question is what effect these regulations are having on the cost of funerals and the choices made by consumers.

The best evidence that we have on the anticompetitive effect of state funeral regulations is their effect on the proportion of people choosing cremation. Funeral directors have good reason to fear the growing popularity of cremation: people choosing cremations are less likely to purchase caskets and other funeral services, such as embalming, chapels, hearses, and limousines.² Quite simply, the increasing popularity of cremation reduces the demand for the goods and services provided by funeral directors, a reduction that should lower the revenues of funeral homes. If state funeral regulations are designed in part to protect funeral directors, we should see their anticompetitive effect in the market for cremations. More specifically, we should see a smaller proportion of people choosing cremation in states with more stringent funeral regulations.

States have adopted two distinct approaches to estimating funeral markets. While many states heavily regulate their funeral markets—requiring funeral homes to have extensive facilities and funeral directors to be embalmers—others leave them relatively unregulated. The mean cremation rates in counties from unregulated and regulated states are presented in Table 1.³ In 1990, the mean cremation rate was 15 percentage points higher in unregulated states (27.79 versus 12.60), implying that people were much more likely to choose cremation there. However,

¹ O.C.G.A. § 43-18-1 (2002).

² Timothy Daniels, Bureau of Economics, Fed. Trade Comm'n, *An Analysis of the Funeral Rule Using Consumer Survey Data on the Purchase of Funeral Goods and Services*, 7-10 (February 1989).

³ Regulated states require funeral directors to be embalmers and/or funeral homes to have embalming preparation rooms.

this comparison does not control for differences between unregulated and regulated states in the socioeconomic and religious characteristics of their populations. When these factors are held constant, the difference in cremation rates between unregulated and regulated states becomes smaller—3.2 percentage points—but is still statistically significant. Since cremations are usually less expensive than burials, this difference implies that Americans spend roughly \$250 million more per year on funerals than they otherwise would.⁴ Since these regulations may affect other funeral choices, such as whether to purchase caskets online, the cost of these regulations to consumers is likely to be much higher than \$250 million per year.

We have just finished collecting county cremation rates for 2000, the means of which are also presented in Table 1. The cremation rate in the entire sample grew from 16.6 percent to 26.3 percent over the decade, reflecting the growth in the popularity of cremation. The gap in the cremation rate between unregulated and regulated states also grew slightly, increasing to 16.6 percentage points by 2000. The gap is larger because the cremation rate grew slightly faster in the unregulated states over the 1990s. This suggests that the anticompetitive effects of state funeral regulations are still present and, if anything, are growing slightly larger over time. These regulations are having a measurable effect on cremation rates and are also likely to affect the market for caskets.

TABLE 1. Mean Cremation Rates in Unregulated and Regulated States

	All States	Unregulated States	Regulated States	Difference
2000	26.34 (16.24)	38.50 (20.21)	21.95 (11.80)	16.55
1990	16.62 (13.56)	27.79 (17.25)	12.60 (9.05)	15.19
? 1990-2000	9.71 (4.80)	10.70 (5.29)	9.36 (4.56)	1.34
Sample Size	2078	524	1554	

NOTE—All statistics are weighted by the mean number of 1990 and 2000 resident deaths in the county. Standard deviations are in parentheses. The sample includes 34 states in the continental United States that gave us county cremation rates for resident deaths. Thirteen states are missing because they did not enter disposition data into their mortality databases for 1990; and, one state, NM, did not send us the data. The data for NJ and KY is for 1999, which is the latest year available.

Why do state funeral regulations impede the choice of cremation and discourage Internet casket sales? I believe it is because state funeral regulations impede the entry of new firms—especially those specializing in low-cost alternatives to the traditional funeral—by raising the cost of entry via facility requirements and training requirements. In short, they increase the market power of existing funeral homes by excluding rivals.

⁴ David E. Harrington & Kathy J. Krynski, *The Effect of State Funeral Regulations on Cremation Rates*, 45 *J. Law & Econ.* 199 (2002).

I think that state funeral regulations may also increase the market power of existing funeral homes by reducing the cost to funeral directors of making disparaging comments about funeral market innovations, such as cremation or online caskets. Consider the experiences of Steve Costomiris, who wanted to buy an online casket for his mother's funeral in Connecticut.⁵ When he asked about online caskets at a funeral home near his mother's house, the funeral director tried to discourage him, saying that "those things are made by prisoners." At another nearby funeral home, he was told, "I'm sorry we don't have any tin cans for you to look at." While Steve persisted and bought an online casket, many other consumers would probably conclude that it was hopeless and return to the most convenient funeral home. Hence, funeral directors who make disparaging comments about funeral market innovations are less likely to lose customers where other funeral directors are making similar comments.

Funeral directors are likely to make similar comments where they have the same training and work in funeral homes with similar facilities, leading them to have the same attitudes about and incentives for resisting funeral market innovations. Since most state funeral regulations force funeral homes to have a common set of facilities and funeral directors to have a high level of training, they lead to less diversity in these inputs than occurs in unregulated states. In this case, it is not just state prohibitions against online casket sales that hinder their growth; it is the entire set of state funeral regulations that contribute to an environment that is hostile to the sale of online caskets.

The Consumer Benefits of Buying Coffins Online

What would be the effect of policies designed to increase the amount of competition in funeral markets by ensuring that consumers could buy coffins online? Consider the situation of Emma who just lost Joseph, her husband of forty years. Since she wants the Lewis Funeral Home to handle Joseph's funeral, she probably feels compelled to buy his coffin there; she is not likely to buy it at the nearby McBride's Mortuary, despite the fact that federal law prohibits the Lewis Funeral Home from charging her a casket handling fee. She might have been willing to buy online but she lives in Georgia where only licensed funeral directors in licensed funeral homes are legally allowed to sell coffins. In this case, the purchase of Joseph's coffin is effectively *tied* to the purchase of the other goods and services of the Lewis Funeral Home.

What happens when you cut the tie—or at least loosen the knot—by ensuring that people like Emma can buy coffins over the Internet? Suppose the increased competition from Internet coffin sales reduces the price of coffins relative to the prices of the other goods and services sold by funeral homes. The profits of funeral homes will be hurt if consumers like Emma respond to the lower price of coffins by buying more coffins and fewer other goods and services. While it is unlikely that Emma will buy two coffins for Joseph, she might buy a fancier one like the military casket by Art Caskets™, and skip renting limousines. However, there are obvious limits on how easily coffins can be substituted for other goods and services. In the jargon of economics, one coffin per funeral implies that coffins and other goods and services are likely to be combined in roughly *fixed proportions*. In this case, economic theory tells us that cutting the tie of casket sales by ensuring consumers can purchase Internet coffins will have very little effect on the profits of funeral homes. Why? Because funeral homes will be able to raise the prices of the other goods and services they sell to compensate for the lower price of caskets.

⁵ Richard Willing, Funeral Homes Fight for Life, USA Today, October 8, 1999 at A1.

This situation reminds me of what Thomas Lynch, a funeral director and poet, said about the impact of the Funeral Rule:

I used to use the *unit pricing method*—the old package deal. It meant that you had only one number to look at. It was a large number. Now everything is itemized. It's the law. So now there is a long list of items and numbers and italicized disclaimers, something like a menu or the Sears Roebuck Wish Book, and sometimes the federally-mandated options begin to look like cruise control or rear-window defrost. I wear black most of the time, to keep folks in mind of the fact we're not talking Buicks here. At the bottom of the list there is still a large number.⁶

In the next edition of *The Undertaking*, he might be able to say:

I used to sell everything thing you needed for a funeral. You bought everything from me. At the bottom of the list, there was one number that customers focused on. It was large number. Now, many of my customers choose to buy their coffins over the Internet, an option that I have to accommodate. It's the law. Now they have two lists with numbers at the bottom. When you add them together, it is still a large number.

Indeed, if caskets and other goods are combined in fixed proportions, it might be the very same number.

For it to be the same number, it must also be true that the market power of funeral homes does not depend on their exclusive right to sell caskets. Suppose their market power emanates primarily from their exclusive right to perform funerals. In this case, caskets are only an input into a process that funeral directors control. If caskets and other funeral goods are combined in fixed proportions, they may be able to raise their other prices enough to completely offset the lower price of coffins, a price that was driven down by the entry of firms selling coffins online. Indeed, Internet casket companies claim that funeral homes are already reacting this way, "cutting their own coffin prices to match [ours], then making up the difference by raising embalming, cosmetology and professional fees."⁷

The fundamental point is that increasing competition in casket markets is not the same thing as increasing competition in funeral markets. For the Internet to yield large savings for funeral consumers, it must increase the amount of competition in funeral markets and not just in casket markets. One of the ways that the Internet could reach beyond casket markets is through the growth of Internet referral systems, such as FuneralDepot.com. FuneralDepot.com recruits funeral homes into its nationwide network of service affiliates by offering them referrals in return for their willingness to accept caskets that are purchased online. The affiliates are also required to set a low, haggle-free price for funeral services. Using this system, FuneralDepot.com has become the leading online seller of caskets.⁸

Autobytel.com operates a similar Internet referral system for new cars. Zettermeyer, Scott Morton and Silva-Risso (2001) estimate that buying a new car through Autobytel.com saves

⁶ Thomas Lynch, *The Undertaking* 3 (1997).

⁷ Richard Willing, *Funeral Homes Fight for Life*, USA Today, October 8, 1999 at A1.

⁸ The executive of another internet casket company told me that he thought that FuneralDepot.com sold more caskets online than anyone else.

consumers approximately 2.2 percent on the price of their cars.⁹ They also present evidence that these consumers would do relatively poorly purchasing their cars offline, “perhaps because they have a high personal cost of collecting information and bargaining.”¹⁰ Since most people find collecting information and bargaining over funeral prices to be more costly than doing so for new cars, Internet referral services like FuneralDepot.com could potentially yield even larger savings for funeral consumers than those produced by Autobytel.com for new car buyers.

Internet referral systems that sell caskets online can increase the amount of competition in funeral markets by inducing funeral homes to compete for Internet referrals. In this way, they do what consumers are reluctant to do: comparison shop for low-cost funeral homes. FuneralDepot.com currently guarantees that their affiliated funeral homes will charge no more than \$2,995 for performing a funeral, including the use of a chapel and other customary funeral goods.¹¹ If Internet referral systems “catch on,” they will probably compete with one another by offering even lower prices for funerals. One of the reasons that they may “catch on” is that people dislike visiting funeral homes. Indeed, FuneralDepot.com stresses that the “only time” its clients “need to go to the funeral home or cremation society is to finalize what was discussed over the telephone and to inspect the facilities.”¹²

The effect of the Internet could also reach beyond casket markets if consumers are spurred to search for lower funeral prices when funeral homes raise their other prices to compensate for lower casket prices. This might occur if casket prices were the best place to conceal the economic rents of funeral homes. Since many consumers are unwilling to visit more than one funeral home, they often have very little information about funeral prices when making their decisions. However, they can easily visit several Internet sites, providing a very low-cost way of getting information about funeral prices, especially casket prices. A funeral home owner recently told me that an increasing number of people are coming to his funeral home with pictures (and prices) of caskets they found on the Internet, leading him to increasingly sell caskets using catalogues rather than the small number of caskets displayed at his funeral home. Armed with better information, some consumers may react to higher prices for things like professional services by searching for better deals, making it difficult for funeral homes to completely offset the lower price of caskets. A greater willingness to search on the part of consumers would also make it easier for new firms to attract customers from established firms, reducing one of the barriers to the entry of new firms into funeral markets.¹³

If the Internet is going to reach beyond casket markets to funeral markets, it is important to eliminate any barriers created by state funeral regulations. Regulations that require funeral homes to have extensive facilities and funeral directors to have extensive training make it more difficult for new firms to enter the market, potentially reducing the benefits to consumers of using the low-cost information available on the Internet to search for lower prices. Since Internet referral systems offer the promise of introducing more competition into funeral markets (and not just

⁹ Florian Zettelmeyer, Fiona M. Scott Morton & Jorge Silva-Risso, *Cowboys or Cowards: Why are Internet Car Prices Lower?* 15 (Yale School of Management Working Paper No ES-16, 2001).

¹⁰ *Id.* at 22.

¹¹ <http://funeraldepot.com/Funeralandcremationnetwork.htm>

¹² *Id.*

¹³ Federal Trade Commission, Bureau of Consumer Protection, *Funeral Industry Practices: Final Staff Report to the Federal Trade Commission and Proposed Trade Regulation Rule (16 CFR Part 453) 87* (June 1978), discusses various barriers to the entry of new funeral firms, including the difficulty of attracting customers.

casket markets), it is especially important to investigate whether state funeral regulations impede their ability to form networks of affiliated funeral homes.

Do State Funeral Regulations Protect Consumers?

State funeral regulations are often defended as protecting consumers. Proponents of state funeral regulations argue that banning online casket sales protects consumers against fraud, a crime that they argue is more likely to be committed by unregulated Internet casket companies. Similarly, state regulations requiring extensive facilities protect consumers against unscrupulous firms that would sell low-quality funeral services to uninformed consumers at very low prices. While it is easy to come up with these sorts of stories of how state regulations protect consumers, the evidence suggests that these regulations primarily benefit the industry.

Kathy Krynski and I found evidence that state funeral regulations harm consumers by increasing the amount of demand inducement. One way that funeral directors have been accused of inducing demand is by steering consumers away from cremations. We found that cremation rates are lower in counties where the number of deaths has been falling, suggesting that funeral directors react to income losses from contracting markets by persuading more consumers to choose traditional funerals over less-profitable cremations. The fact that this pattern is more pronounced in strictly regulated states suggests to us that demand inducement is more prevalent there. The perception that funeral directors induce demand is so widespread that FuneralDepot.com advertises itself as a way to avoid it, saying that its clients “will receive exactly what each package describes without the pressure of upgrading to an unnecessary and costly alternative.”¹⁴

What is the best story for why prohibitions against online casket sales might be in consumers’ long-run interest? The one that I find most persuasive begins with the Batesville Casket Company which says that it sells “only to licensed funeral directors operating licensed funeral firms.” To test their claim, I called an Internet casket company to see whether they would sell me a Batesville casket. The salesman said, “Sure, which one do you want?” I replied, “I don’t know. I’m just interested in a regular one—one that’s sort of middle of the road.” “You can’t really sell caskets that way,” he said, explaining that “there were too many different models to choose among.” When I asked whether I could look at pictures of Batesville caskets on his website, he said, “No. We’re not allowed to put them on our website.” At that point, I made the following suggestion: “How about if I visit a funeral home and look over the different Batesville caskets and give you a call back?” “That would work,” he said, ending the conversation with the pledge, “Be sure to call back, I’ll save you a bundle.”

This raises the potential problem that local funeral directors will help consumers choose their caskets, only to have consumers buy them online. In this case, the Internet casket companies are *free riding* on the service provided by funeral directors. If consumers then use funeral homes offering the lowest price for handling funerals—ones that do not help consumers choose caskets—the original funeral homes will not be rewarded for their service in helping consumers choose their caskets. Competitive pressures might eventually eliminate funeral homes that offered help in choosing caskets, leaving consumers in the dark. Since the manufacturers of high quality caskets do not want consumers choosing caskets by flipping coins (or worse yet, by lowest price), they have an incentive to reward funeral homes (and Internet casket companies) that inform consumers about quality. Carlton and Chevalier (2001) discuss a variety of ways that

¹⁴ *Id.*

manufacturers can mitigate free riding by online retailers, including refusing to deal with price-cutters or eliminating online retailing altogether.¹⁵

It would be a mistake to rationalize prohibitions against online casket sales on the basis of their effect on quality, especially since the quality issue cuts both ways. When consumers come into funeral homes with pictures of caskets they found on the Internet, funeral directors are *free riding* on the services of the Internet casket companies when they reach for casket catalogues rather than guiding consumers to their casket display rooms.¹⁶ For example, it is hard to imagine that many funeral homes would display humorous caskets, like “Return to Sender,” but most would be willing to sell them from catalogues. It is unlikely that these humorous caskets would have found their niche without Internet casket companies that could reach the small number of people interested in them.

Conclusion

State funeral regulations are burying online casket sales in some states, smothering competition that would reduce the price of caskets and offer greater variety to consumers. The changes arising from greater competition would encourage consumers to substitute fancier coffins for other funeral goods and services, reducing the economic rents of funeral homes. However, ensuring that consumers can buy caskets over the Internet would not benefit consumers as much as some people might imagine because funeral homes are likely to raise their prices for other goods and services as the market for caskets becomes more competitive.

The benefits to funeral consumers will be greater if the Internet can reach beyond casket markets to stimulate competition in funeral markets. One of the most promising ways that this might occur is through the growth of Internet referral systems, such as FuneralDepot.com. By getting funeral homes to compete for their referrals, these systems can shop for lower funeral prices, a task that many of their clients are unwilling to do for themselves. Greater competition in casket markets might also spill over to funeral markets if the price of caskets had been the best place to conceal the economic rents of funeral homes. For example, if funeral directors raised the price of their professional services to completely offset lower casket prices, consumers might view them as excessive, coaxing them to search for better deals.

There are a large number of state funeral regulations that impede competition in funeral markets, including facility requirements, training requirements and statutes that designate the sale of caskets as being within the province of funeral directing. Many of them impede the sale of caskets online as well as the entry of new firms, especially those specializing in low-cost alternatives to the traditional funeral. State statutes that prohibit anyone other than licensed funeral directors from selling caskets have been challenged in court recently.¹⁷ Overturning these statutes should increase the amount of competition in funeral markets. However, if these are the

¹⁵ Dennis.A. Carlton and Judith.A. Chevalier, Free Riding and Sales Strategies for the Internet, 49 J. Ind. Econ. 441, 442 (2001).

¹⁶ Carlton and Chevalier discuss several important differences between these two free rider situations, *Id.* at 443.

¹⁷ A federal judge ruled in 1998 that the Georgia statute was unenforceable because there was “no specific language that actually makes it a crime for a nonfuneral director to sell a casket,” an omission that the Assistant Attorney General of Georgia hoped to be able to rectify. Bill Rankin, Alpharetta Store Wins Right to Sell Caskets, *The Atlanta Journal and Constitution*, November 3, 1998 at B1.

only types of state regulations that are repealed or reformed, don't be surprised if there are still excessively large numbers at the bottom of consumers' funeral bills.