

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-008

AN ORDER to repeal FD 6.10 (1) (a), (b) and (c), (2) (a), (4) and (5); to renumber and amend FD 6.10 (1) (intro.) and (2) (b) (intro.), 1., 2., 3. and 4.; to repeal and recreate FD 6.10 (3); and to create FD 6.10 (1) (title) and (2) (title), (b), (c), (d) and (e), relating to the solicitation of prospective purchasers of burial agreements funded with the proceeds of a life insurance policy.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

01-20-99 RECEIVED BY LEGISLATIVE COUNCIL.
02-12-99 REPORT SENT TO AGENCY.

RNS:AS:kjf;wu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

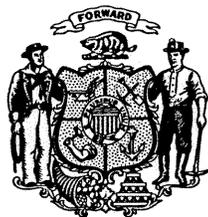
Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

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CLEARINGHOUSE RULE 99-008

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

The analysis states that in s. FD 6.10 (2) (b) 2., the word "standard" is deleted from the phrase "central standard time." However, this change is not made in the rule-making order. The agency should either remove this comment or add this change to the order.

STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : FUNERAL DIRECTORS EXAMINING
FUNERAL DIRECTORS : BOARD ADOPTING RULES
EXAMINING BOARD : (CLEARINGHOUSE RULE 99-)

PROPOSED ORDER

An order of the Funeral Directors Examining Board to **repeal** FD 6.10 (1) (a), (b), (c), (2) (a), (4) and (5); to **renumber and amend** FD 6.10 (1) (intro.), (2) (b) (intro.), 1., 2., 3. and 4.; to **repeal and recreate** FD 6.10 (3); and to **create** FD 6.10 (1) (title), (2) (title), (b), (c), (d) and (e), relating to the solicitation of prospective purchasers of burial agreements funded with the proceeds of a life insurance policy.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), 445.03 (2) (a) and 445.124 (3m) (j) 2., Stats.

Statutes interpreted: s. 445.12 (3g), Stats.

This proposed rule-making order of the Funeral Directors Examining Board pertains to the solicitation of prospective purchasers of burial agreements funded with the proceeds of a life insurance policy. The primary purpose of this rule-making is to remove the date of January 1, 2000, from s. FD 6.10 (5). Unless this date is removed, a funeral director, an owner of a funeral establishment or an agent would no longer be able to solicit the sale of burial agreements funded with the proceeds of a life insurance policy by telephone. By removing the date from s. FD 6.10 (5), the rest of the section becomes obsolete and this proposal simply repeals the whole subsection.

This proposed rule-making order also clarifies the provisions in each subsection in the rule by creating a title for each subsection, combining several subsections which relate to the same type of solicitation, and rewording some of the provisions. A minor policy change relates to removing the word "standard" from "central standard time" in the current s. FD 6.10 (2) (b) 2.

This proposal creates a new s. FD 6.10 (3), for the purpose of clarifying the issue of door-to-door solicitations of burial agreements funded with the proceeds of a life insurance policy; however, the newly-created section does not create any new policy. Section 445.12 (3g), Stats., prohibits door-to-door solicitation.

exp. 12/31/99

Draft of January 20, 1999

TEXT OF RULE

SECTION 1. FD 6.10 (1) (title) is created to read:

FD 6.10 (1) (title) AUTOMATED TELEPHONE CALLS.

SECTION 2. FD 6.10 (1) (intro.) is renumbered FD 6.10 (1) and amended to read:

FD 6.10 (1) ~~No~~ A funeral director, owner of a funeral establishment, or agent may only initiate any a telephone call using an ~~automatic~~ automated telephone dialing system or an artificial or prerecorded voice system for the purpose of selling or soliciting a burial agreement funded by the proceeds of a life insurance policy to any of the following: when calling a residential or business telephone line, provided that the funeral director, owner of a funeral establishment, or agent obtains the prior express written consent of the party to be called.

SECTION 3. FD 6.10 (1) (a), (b) and (c) are repealed.

SECTION 4. FD 6.10 (2) (title) is created to read:

FD 6.10 (2) (title) LIVE-VOICE TELEPHONE CALLS.

SECTION 5. FD 6.10 (2) (a) is repealed.

SECTION 6. FD 6.10 (2) (b) (intro.), 1., 2., 3. and 4. are renumbered FD 6.10 (2) (a) (intro.), 1., 2., 3. and 4. and FD 6.10 (2) (a) (intro.), as renumbered, is amended to read:

FD 6.10 (2) (a) (intro.) ~~Written~~ A funeral director, owner of a funeral establishment, or agent sends written notice shall advise the customer to the prospective purchaser at least 10 days in advance of the call, advising the prospective purchaser of all of the following:

SECTION 7. FD 6.10 (2) (b), (c), (d) and (e) are created to read:

FD 6.10 (2) (b) The telephone caller immediately begins the conversation by providing the called party with the name of the funeral director, owner of the funeral establishment, or agent, the name of the person or entity upon whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted.

(c) The telephone caller records the name and telephone number of persons who request placement on a do-not-call list at the time the request is made and the caller agrees to make no further calls to a person who has requested placement on the list.

(d) A telephone call is only made to a prospective purchaser or the prospective purchaser's authorized representative, in a hospital, health care facility, elderly home or similar establishment, if the prospective purchaser or the prospective purchaser's authorized representative requests the call.

(e) A telephone call is only made to a prospective purchaser of a burial agreement funded by the proceeds of a life insurance policy whose death is imminent or appears to be imminent, if the prospective purchaser or the prospective purchaser's authorized representative requests the call.

SECTION 8. FD 6.10 (3) is repealed and recreated to read:

FD 6.10 (3) DOOR-TO-DOOR SOLICITATION. A funeral director, owner of a funeral establishment, or an agent may not contact a prospective purchaser of a burial agreement funded with the proceeds of a life insurance policy by door-to-door solicitation.

SECTION 9. FD 6.10 (4) and (5) are repealed.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____

Chairperson
Funeral Directors Examining Board

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

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1/20/99

Draft of January 20, 1999

**STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : FUNERAL DIRECTORS EXAMINING
FUNERAL DIRECTORS : BOARD ADOPTING RULES
EXAMINING BOARD : (CLEARINGHOUSE RULE 99-008)**

TO: Senator Judy Robson, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the FUNERAL DIRECTORS EXAMINING BOARD is submitting in final draft form proposed rules relating to the solicitation of prospective purchasers of burial agreements funded with the proceeds of a life insurance policy.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

APR 30 1993



Tommy G. Thompson
Governor

State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING



Marlene A. Cummings
Secretary

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Administrative Rules in Final Draft Form

Funeral Directors Examining Board

Rule: FD 6.10

Relating to: Solicitation of Prospective Purchasers of Burial Agreements

Clearinghouse Rule: No. 99-008

**STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 99-008
FUNERAL DIRECTORS : (s. 227.19 (3), Stats.)
EXAMINING BOARD :**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

These rules will have no significant impact upon state or local units of government.

IV. STATEMENT EXPLAINING NEED:

This proposed rule-making order pertains to the solicitation of prospective purchasers of burial agreements funded with the proceeds of a life insurance policy. The primary purpose of this rule-making is to remove the date of January 1, 2000, from s. FD 6.10 (5). Unless this date is removed, a funeral director, an owner of a funeral establishment or an agent would no longer be able to solicit the sale of burial agreements funded with the proceeds of a life insurance policy by telephone. By removing the date from s. FD 6.10 (5), the rest of the section becomes obsolete and this proposal simply repeals the whole subsection. This order also clarifies the provisions in each subsection in the rule by creating a title for each subsection, combining several subsections which relate to the same type of solicitation, and rewording some of the provisions.

This proposal creates a new s. FD 6.10 (3), for the purpose of clarifying the issue of door-to-door solicitations of burial agreements funded with the proceeds of a life insurance policy; however, the newly-created section does not create any new policy. Section 445.12 (3g), Stats., prohibits door-to-door solicitation.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on March 16, 1999. Kim Richardson, Atlanta, GA; Terrence Schwartz, Lancaster, WI, representing the Wisconsin Funeral Directors Association; Ashley Moore, Madison, WI, representing the Funeral Service Alliance of WI; Janet Vick, Watertown, WI; Ken Schmidt, West Bend, representing the Funeral Service Alliance; Dean Dickinson, La Crosse, representing the Funeral Service Alliance; and Ron

Kuehn, Madison, WI, representing the Wisconsin Pre-Need Life Insurance Coalition (also submitted written comments) all appeared in person and registered in support of the proposed rules. Written comments in support of the proposed rules were received from Patrick Essie, Executive Director, Funeral Service Alliance of Wisconsin, Madison, WI.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

The recommendation suggested in the Clearinghouse Report was accepted in whole.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

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STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : FUNERAL DIRECTORS EXAMINING
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EXAMINING BOARD : (CLEARINGHOUSE RULE 99-008)

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FD 6.10 (2) (a) (intro.) ~~Written~~ A funeral director, owner of a funeral establishment, or agent sends written notice shall advise the customer to the prospective purchaser at least 10 days in advance of the call, advising the prospective purchaser of all of the following:

2. That the call will only be made between the hours of 9:00 a.m. to 7:00 p.m. central ~~standard~~ time.

SECTION 7. FD 6.10 (2) (b), (c), (d) and (e) are created to read:

FD 6.10 (2) (b) The telephone caller immediately begins the conversation by providing the called party with the name of the funeral director, owner of the funeral establishment, or agent, the name of the person or entity upon whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted.

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SECTION 9. FD 6.10 (4) and (5) are repealed.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____ Agency _____
Chairperson
Funeral Directors Examining Board

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

FINAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

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4/30/99