

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0832/P1dn

MDK:cmh:lp

March 1, 1999

Senator Shibilski:

Please review this preliminary draft very carefully to make sure that it achieves your intent. I will finalize the draft and prepare an analysis after the following issues are resolved:

1. The draft creates a permit for a "funeral services facility", that may only be issued to an operator of a funeral establishment. The draft uses this approach, rather than create "Class A" and "Class B" establishment permits, because it is more similar to current law. Also, should the draft impose any other eligibility requirements for a funeral services facility permit?

2. Is the amendment of s. 445.12 (6), stats., okay?

3. Is proposed s. 445.095 (2) (e), okay?

4. Please review proposed s. 134.89, which is based on the California law provided by Patrick Essie and Ashley Moore. Also, is the \$5,000 forfeiture okay?

5. The draft should probably be revised to specify the types of requirements and procedures that must be included in rules promulgated under s. 49.30 (2), stats., as amended by the draft.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

Please note the following regarding Section 3 of the instructions:

1. Certain property is excluded from consideration in determining eligibility for Medical Assistance (MA). Among the excluded property is an irrevocable burial trust, which is limited to \$2,000 under current law. Also excluded is a burial fund, which is limited to \$1,500, minus the sum of the cash value of amounts held in an irrevocable

burial trust and a life insurance policy (which, in turn, is limited to \$1,500). Thus, the total excludable amount that may be held for burial and related expenses is \$3,500, not \$7,000 as your instructions indicate. The limit on burial funds and life insurance policies is set by federal law and must therefore be changed at that level. The limit on irrevocable trusts, however, may be adjusted at the state level. Therefore, the draft eliminates the \$2,000 limit on irrevocable trusts. Is that your intent?

2. Under current law, if the estate of a recipient of any public assistance (including MA, Wisconsin Works (W-2) or Supplemental Security Income (SSI)) is insufficient to pay the funeral, burial and cemetery expenses, the county, tribal governing body or organization responsible for the burial of the recipient must pay at most \$1,000 for the cemetery expenses and \$1,000 for the funeral and burial expenses. If the total cemetery expenses exceed \$3,500, the county, tribal governing body or other organization is not required to make any payment. The same applies for funeral and burial expenses that exceed \$3,500. The draft raises the \$1,000 limit on funeral and burial expenses to \$3,500 and eliminates the \$3,500 cap on funeral and burial expenses. The draft does not adjust the limits for cemetery expenses. Is this your intent?

3. Who is supposed to notify "the state" of "any excess funds"? Any funds that are in the recipient's estate are currently subject to estate recovery, with certain limitations. Why would the state have to be notified specifically of unused funds from a burial trust?

Tina A. Yacker
Legislative Attorney
Phone: (608) 261-6927
E-mail: Tina.Yacker@legis.state.wi.us