

1999 DRAFTING REQUEST

Bill

Received: 11/12/1998

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Kevin Shibilski (608) 266-3123**

By/Representing: **Pat Essie**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Counties
Occupational Reg. - misc**

Extra Copies: **TAY, MGG**

Pre Topic:

No specific pre topic given

Topic:

Funeral establishment licenses; compliance with federal trade commission regulations regarding sales of funeral items; uniform trust for funeral items; winter burials

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	kunkemd 03/01/1999	chanaman 03/01/1999	lpaasch 03/01/1999	_____	lrb_docadmin 03/01/1999		S&L
	kunkemd 04/21/1999	chanaman 04/21/1999		_____			
/P2	kunkemd 01/19/2000	chanaman 01/19/2000	jfrantze 04/22/1999	_____	lrb_docadmin 04/22/1999		State
/1			hhagen 01/19/2000	_____	lrb_docadmin 01/19/2000	lrb_docadminState 02/29/2000	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For: 3/21/00

<END>

1999 DRAFTING REQUEST

Bill

Received: 11/12/1998

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Kevin Shibilski (608) 266-3123**

By/Representing: **Pat Essie**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Counties
Occupational Reg. - misc**

Extra Copies: **TAY, MGG**

Pre Topic:

No specific pre topic given

Topic:

Funeral establishment licenses; compliance with federal trade commission regulations regarding sales of funeral items; uniform trust for funeral items; winter burials

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	kunkemd 03/01/1999	chanaman 03/01/1999	lpaasch 03/01/1999	_____	lrb_docadmin 03/01/1999		S&L
	kunkemd 04/21/1999	chanaman 04/21/1999		_____			
/P2	kunkemd 01/19/2000	chanaman 01/19/2000	jfrantze 04/22/1999	_____	lrb_docadmin 04/22/1999		State
/1			hhagen 01/19/2000	_____	lrb_docadmin 01/19/2000		State

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

1999 DRAFTING REQUEST

Bill

Received: 11/12/98

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Kevin Shibilski (608) 266-3123**

By/Representing: **Pat Essie**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Counties
Occupational Reg. - misc**

Extra Copies: **TAY, MGG**

Pre Topic:

No specific pre topic given

Topic:

Funeral establishment licenses; compliance with federal trade commission regulations regarding sales of funeral items; uniform trust for funeral items; winter burials

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	kunkemd 03/1/99	chanaman 03/1/99	lpaasch 03/1/99	_____	lrb_docadmin 03/1/99		S&L
	kunkemd 04/21/99	chanaman 04/21/99		_____			
/P2		<i>cmh</i> 1/19	jfrantze 04/22/99 <i>hh/19</i> <i>hh/19</i>	_____	lrb_docadmin 04/22/99		State

FE Sent For:

11

1999 DRAFTING REQUEST

Bill

Received: 11/12/98

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Kevin Shibilski (608) 266-3123**

By/Representing: **Pat Essie**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Counties
Occupational Reg. - misc**

Extra Copies: **TAY, MGG**

Pre Topic:

No specific pre topic given

Topic:

Funeral establishment licenses; compliance with federal trade commission regulations regarding sales of funeral items; uniform trust for funeral items; winter burials; ~~reimbursement for county assistance~~

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	kunkemd 03/1/99	chanaman 03/1/99	lpaasch 03/1/99	_____	lrb_docadmin 03/1/99		S&L

FE Sent For:

*cmk
4/21
/12*

4/21

6/12

END
4/22

1999 DRAFTING REQUEST

Bill

Received: **11/12/98**

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Kevin Shihilski (608) 266-3123**

By/Representing: **Pat Essie**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Counties
Occupational Reg. - misc**

Extra Copies: **TAY, MGG**

Pre Topic:

No specific pre topic given

Topic:

Funeral establishment licenses; compliance with federal trade commission regulations regarding sales of funeral items; uniform trust for funeral items; winter burials; reimbursement for county-assiste

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	kunkemd	cmm 1/1 3/1	3-1LP.	3-1LP <u>HW</u>			S&L

FE Sent For:

<END>

FUNERAL SERVICE ALLIANCE

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
MARK KUNKEL	ASHLEY MOORE
FAX NUMBER:	DATE:
264-8522	OCTOBER 27, 1998
COMPANY:	TOTAL NO. OF PAGES INCLUDING COVER:
	2
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
RE:	YOUR REFERENCE NUMBER:
FUNERAL LEGISLATION	

URGENT
 FOR REVIEW
 PLEASE COMMENT
 PLEASE REPLY
 PLEASE RECYCLE

NOTES/COMMENTS:

Mark-

I hope this gives you some idea of what we are trying to do. Please let me know if you have any questions that you need answered before the November 2nd meeting. In addition to Patrick Essie and Bill Cress, I will also be attending the meeting.

Thanks for all of your help!

Ashley



FSA of WISCONSIN

Funeral Service Alliance of Wisconsin

To: Mark Kuntzel
 From: Patrick Essie / Ashley Moore
 Date: October 27, 1998
 Re: Funeral Legislation

*Class B - need funeral director
 - limit in services or # of classes that can have?
 or # of classes that can have?*

only class A can have class B

We have five issues that we would like to address in this legislation, the issues are as follows:

1. Currently all funeral homes are required to have a licensed funeral director and a preparation room at each facility. We would like to establish a Class A facility license and Class B facility license. A funeral director would have to have a Class A facility, which would require a licensed funeral director and a preparation room before they could have a Class B facility, which would not require a licensed funeral director or a preparation room

*preparat - room - embalming of bodies
 - walls - washable surface, exhaust fans, etc*

2. Funeral directors currently have to comply with FTC regulations when working with consumers to arrange funerals. For instance, they need to be forthcoming with a general price list. We would like to include everyone selling funeral merchandise and/or funeral services including pre-need or at-need funding (casket stores, cemeteries, etc.). *monument sellers*

3. We would like to establish a unified trust form that would itemize the service, merchandise and cash advance items, but allow one CD based on a total amount rather than having separate CD's.

Delim 52K cap on irrevocable

reference one form

(2) treat similar as in 50

(3) use uniform form

4. We would like to raise the amount reimbursed for county assisted funerals to \$3500 and create uniform rules that each county needs to abide by regarding reimbursement.

Funeral or Cemetery items

5. We would like to require all cemeteries to offer winter burials. This legislation was drafted during the last session and we would like to allow that (AB '07).

This is a very brief summary, but it gives you a general idea of what we would like to include in this legislation.

Please call if you have any questions

Should DMFS?

Former SBill 305?

SB 305

*no funds, indigent, etc
 ability to pay*

starts to county is at \$1K, increase to \$3K

(5) are there actual costs (reimburse)

FUNERAL SERVICE ALLIANCE OF WISCONSIN

FACSIMILE TRANSMITTAL SHEET

TO: Mark Kunkel FROM: Ashley Moore
 COMPANY: DATE: 01/22/99
 FAX NUMBER: 266-5648 TOTAL NO. OF PAGES INCLUDING COVER: 5
 PHONE NUMBER: SENDER'S REFERENCE NUMBER:
 RE: Draft Changes YOUR REFERENCE NUMBER:

- URGENT
- FOR REVIEW
- PLEASE COMMENT
- PLEASE REPLY
- PLEASE RECYCLE

NOTES/COMMENTS:

Mark-

Let me know if you have any questions! Thanks- Ashley



To: Mark Kunkel
From: Patrick Essie / Ashley Moore
Date: January 22, 1999
Re: Funeral Legislation Additions

The memo I sent to you dated October 27, 1998, has five sections. The sections that we have additions to are 2 and 3.

Section 2 - California just passed a bill that is similar to what we would like to do in Wisconsin regarding disclosures etc. I have attached a copy of the bill and starred the section that we would like to include but have not talked about before.

Section 3 - Currently there is a \$3500 cap on the funeral expense side and \$3500 cap on the cemetery side when trusting for an MA funeral we are trying to eliminate that cap. Therefore, we would like the bill to reference that the state shall be notified of any excess funds so that they can be collected through the state recovery act.

If you have any questions please let me know.

C/9-496

Assembly Bill No. 1709

CHAPTER 286

AN ACT to add Sections 7685.5, 9663, and 17530.7 to the Business and Professions Code, relating to cemetery and funeral fraud.

[Approved by Governor August 12, 1998. Filed with Secretary of State August 13, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1709, Alquist. Cemetery and funeral fraud.

(1) Existing law requires that funeral directors, upon beginning discussion of prices or of the funeral goods and services offered, provide a detailed printed listing specifying the price for the professional services offered to their prospective customers.

This bill would additionally require that a funeral establishment or cemetery authority make available to any individual who, in person, inquires about funeral or cemetery purchases, a copy of a consumer guide for funeral and cemetery purchases, provided and approved by the Department of Consumer Affairs, in consultation with the funeral and cemetery industries and other interested parties. The department would be required to make the guide available both in printed form and electronically on the Internet.

This bill would also provide that it is unlawful for any person, other than a funeral director, to sell or to offer to sell, on a retail basis, a casket, alternative container, or outer burial container, unless the person complies with certain price and disclosure requirements.

The bill would expand the scope of activities that are to be undertaken by sellers of human remains containers and that are subject to existing misdemeanor provisions governing funeral practices, and, thus, this bill would impose a state-mandated local program by the creation of a new crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 7685.5 is added to the Business and Professions Code, to read:

7685.5. (a) The Department of Consumer Affairs shall make available to funeral establishments and cemetery authorities a copy

Ch. 286

— 2 —

of a consumer guide for funeral and cemetery purchases for purposes of reproduction and distribution. The funeral and cemetery guide that is approved by the Department of Consumer Affairs, in consultation with the funeral and cemetery industries and any other interested parties, shall be made available in printed form and electronically through the Internet.

(b) A funeral establishment shall prominently display and make available to any individual who, in person, inquires about funeral or cemetery purchases, a copy of the consumer guide for funeral and cemetery purchases, reproduced as specified in subdivision (a).

SEC. 2. Section 9663 is added to the Business and Professions Code, to read:

9663. (a) The Department of Consumer Affairs shall make available to funeral establishments and cemetery authorities a copy of a consumer guide for funeral and cemetery purchases for purposes of reproduction and distribution. The funeral and cemetery guide that is approved by the Department of Consumer Affairs, in consultation with the funeral and cemetery industries and any other interested parties, shall be made available in printed form and electronically through the Internet.

(b) A cemetery authority shall prominently display and make available to any individual who, in person, inquires about funeral or cemetery purchases, a copy of the consumer guide for funeral and cemetery purchases, reproduced as specified in subdivision (a).

SEC. 3. Section 17530.7 is added to the Business and Professions Code, to read:

17530.7. It is unlawful for any person, other than a funeral director as defined in Section 7615, to sell, or offer to sell, on a retail basis, a casket, alternative container, or outer burial container, unless that person does all of the following:

(a) Provides to any person, upon beginning any discussion of prices, a written or printed list containing, but not necessarily limited to, the price of all caskets and containers that are normally offered for sale by that seller. The seller shall also provide a written statement or list that, at a minimum, specifically identifies particular caskets or containers by price and by thickness of metal, type of wood, or other construction, and by interior and color, when a request for specific information on caskets or containers is made in person by any individual. This information shall also be provided over the telephone, upon request.

(b) Places the price in a conspicuous manner on each casket. Individual price tags on caskets shall include the thickness of metal and type of wood or other construction, as applicable, in addition to interior and color information.

(c) Places in a conspicuous manner on each casket represented as having a sealing device of any kind, the following notices in at least eight-point boldface type: "THERE IS NO SCIENTIFIC OR OTHER

— casket,
alt. container
outer burial
container

EVIDENCE THAT ANY CASKET WITH A SEALING DEVICE WILL PRESERVE HUMAN REMAINS."

(d) Furnishes to the buyer prior to the sale, a written or printed itemized statement of all costs associated with the sale.

(c) Provides to the buyer a statement that includes a notice to the buyer that he or she may contact the office of the district attorney in that jurisdiction with any questions or complaints. At a minimum, the information shall be in eight-point boldface type, and state the following: "THE SELLER IS NOT A FUNERAL DIRECTOR AND IS NOT LICENSED BY THE DEPARTMENT OF CONSUMER AFFAIRS, AND MAY NOT OFFER OR PERFORM FUNERAL SERVICES. STATE AND FEDERAL LAWS PROHIBIT A FUNERAL DIRECTOR FROM CHARGING HANDLING FEES FOR A CASKET SUPPLIED BY ANOTHER PARTY. THE MONEYS RECEIVED BY THE SELLER FOR THE PURCHASE OF A CASKET ARE NOT SUBJECT TO STATE LAW GOVERNING MONEY HELD IN TRUST. THE SELLER IS NOT BOUND BY STATE LAWS OR REGULATIONS THAT GOVERN FUNERAL HOMES AND CEMETERIES. THE PURCHASER ENTERS THIS AGREEMENT AT HIS OR HER OWN RISK. FOR MORE INFORMATION, CONTACT THE OFFICE OF THE DISTRICT ATTORNEY IN YOUR COUNTY."

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

LEXIS-NEXIS
Xchange™

Source Directory History ECLIPSE™ Options Sign-Off Help



Search

Get a Document

Check a Citation

Source: Federal Register and CFR, Combined

Type: Boolean FREESTYLE™

"casket handling fee"

New Search

prev Document 4 of 4 next

Cite List

Full Text

FOCUS! Save As ECLIPSE

[More Like This](#) | [More Like Selected Text](#)

[View Printable Page](#) | [Deliver Documents](#)

59 FR 1592, *

FEDERAL REGISTER

VOL. 59, No. 7

Rules and Regulations

FEDERAL TRADE COMMISSION (FTC)

16 CFR Part 453

Funeral Industry Practices Trade Regulation Rule

Part II

59 FR 1592

DATE: Tuesday, January 11, 1994

ACTION: Final amended trade regulation rule.

[...*1592]

SUPPLEMENTARY INFORMATION: The amended Rule retains the Rule's primary itemization, price and other disclosure requirements, without major, substantive modification; expressly prohibits non-declinable fees (such as so-called "**casket handling fees**" or "basic facilities fees") charged in addition to the non-declinable fee for basic services of funeral director and staff; deletes the affirmative telephone disclosure requirement, but retains the obligation to give price and ...

... [*1593] non-declinable fees in addition to the one for "basic services of funeral director and staff," permitted under § 453.2(b)(4)(iii)(C). These amendments effectively eliminate the imposition of so-called "**casket handling fees**" as separate non-declinable fees charged to consumers who purchase caskets from non-funeral home sources. n9 The Commission has determined that these fees serve to frustrate the Rule's basic "unbundling" requirement by penalizing consumers who ...

... [*1595] minor differences, retention of the Rule, repeal of the affirmative telephone disclosure, prohibition of separate non-declinable fees, in addition to the non-declinable fee for basic services of funeral director and staff, such as so-called "**casket handling fees**," and the adoption of several "fine-tuning" amendments. n25

In response to the Presiding Officer's published invitation, n26 forty-nine groups and individuals submitted comments on those reports by November 1, 1990. n27

...

... [*1595] director and staff," in which the rulemaking staff concurred.

n29 The Office of the Director, Bureau of Consumer Protection, favored a limited review by the Bureau of the amended Rule to measure its impact, in particular the prohibition of "**casket handling fees.**" See Memorandum from Gerald Caplan, Deputy Director, Bureau of Consumer Protection, to the Commission, June 20, 1991 at 5. The Bureau of Economics recommended the inclusion of a future and final mandatory review of the Rule under the ...

... [*1597] n46 and that many affirmatively attempt to discourage potential price competition from third-party cemeteries and other non-funeral home retailers who sell caskets on a pre-need basis, by imposing so-called "**casket handling fees,**" averaging \$ 300-\$ 500 per funeral on consumers who patronize those sellers. n47

n45 R-G-6 (NFDA/NSM Comment) at 5, 109-110, 113-114; R-M-9 (NFDA/ ...

... [*1597] II, 593, 649; Nelson, Tr. Vol. II, 180; and Barr, Kansas state representative/cemeterian, Tr. Vol. III, 1513.

n47 Record evidence concerning the widespread existence and effects of so-called "**casket handling fees**" is fully discussed in Section II.C.3, *Infra*.

Finally, the empirical data and record testimony documents that a majority of consumers exhibit low levels of awareness concerning their rights under the Rule ...

... [*1600] 97-100.

C. Section-by-Section Analysis

1. Introduction

The Rule as amended contains two major changes-deletion of the affirmative telephone disclosure requirement and the prohibition of non-declinable fees (such as so-called "**casket handling fees**" and "basic facilities fees") charged in addition to the non-declinable fee for basic professional services of the funeral director and staff. These primary changes, and a number of "fine-tuning" amendments, are intended to increase the ...

... [*1602] record. Those benefits are likely to increase over time as industry compliance with, and consumer awareness of, the Rule's other provisions increases.

n109 R-B-5 at 42272-42273.

n110Id. at 42273, n. 140.

3. "**Casket Handling Fees:**" Section 453.4(b)(1)(ii)

One benefit the Commission ascribed to the Rule in its 1982 Statement of Basis and Purpose was that "the greater availability of price information may encourage entry into the funeral market of new ...

... [*1603] B-5 at 42260, 42279-42282.

n116Id. at 42281.

Some ANPR commenters asserted that funeral providers, in response to emerging competition in the sale of caskets from cemeteries and other third-parties, charge high "**casket handling fees**" for arrangements where consumers supply their own caskets purchased from those third parties. n117 The alleged purpose of these fees was to recoup overhead costs and profits built into casket prices but lost on the third-party casket sales. The Commission in the NPR thus sought comment on the existence and impact of so-called "**casket handling fees**," and on whether, and how, the Rule should address that practice. n118

n117 See R-A-1 (Notice of Proposed Rulemaking) at 19867.

n118Id. at 19870 (Question 14).

a. Existence and impact. Members of the third-party, casket seller industry n119 provided empirical and other evidence on the purpose, widespread existence and impact of these "**casket handling fees**." Casket seller representatives asserted that the emergence of third-party casket sellers is directly attributable to the Funeral Rule's "unbundling" provision; those sales were virtually non-existent before the Rule. n120 A PAA official who ...

... [*1603] Nebraska, Ohio, Pennsylvania and Wisconsin; 74% of those sellers exist in Pennsylvania, Michigan, and Ohio. Id; HX-101 at Exhibit "A-3."

The PAA Survey provided empirical evidence on the widespread existence and amount of "**casket handling fees**," as reported by the respondent retailers. Eighty-six percent of the respondents said that at least 60% of the funeral homes in their market area assess handling fees, about two-thirds said that 80% to 100% charge the fees, and one-quarter reported that all of the homes impose the **casket handling fee**. n122 Mr. Radovich concluded that a substantial number of providers assess "**casket handling fees**" wherever third-party sellers exist. n123 Individual casket retailers agreed with that finding, n124 and further testified that funeral providers began imposing handling fees when third-party casket sellers entered the ...

... [*1603] 118. One funeral provider witness who did not charge handling fees stated on the record that, if he got competition from casket retailers, he would begin to assess fees. Hennessy, Tr. Vol. II, 997.

Concerning the amount of "**casket handling fees**" assessed, 81% of the PAA Survey respondents said that the average handling fee was over \$ 300; 74% reported an average fee between \$ 300 and \$ 500. n126 Sixty-two percent of the PAA Survey respondents further ...

... [*1603] non-declinable professional services fee, providers may be engaged in deceptive pricing. Id. at 671.

Several local surveys conducted by individual casket retailers provided further evidence on the range of "**casket handling fees**" in given market areas. Those surveys found that handling fees ranged from \$ 100 to \$ 700 in Chicago; DeSoto, R-B-42; and Hennessy, HX-61 at 8; from \$ 150 to \$ 1000 in Greater ...

... [*1603] Vol. XV, No. 9 (Sept. 1985) at 1) (\$ 1,000-\$ 2,500); Starks, Tr. Vol. II, 412 (\$ 700); and Drozda, Tr. Vol. II, 896-897 (\$ 425).

Record evidence indicates that "**casket handling fees**" prevent potential price competition and reduce consumer choice. Ninety-two percent of the casket seller

respondents to the PAA Survey reported that their casket sales have declined since the imposition of handling fees; about one-third said that they have reduced or eliminated their casket marketing efforts as a result of those fees. n130 One industry observer testified that "**casket handling fees**" have caused the exit from the casket market of five small businesses who thought that they could gain market share by offering third-party caskets at lower prices. n131 Several casket retailers and others also asserted that these so-called " ...

... [*1603] cloth-covered casket and \$ 650 for a sealed, metal casket. See, DeSoto, R-B-42.

Finally, third-party sellers testified that market forces will not effectively regulate "**casket handling fees**," and that the elimination of those discriminatory fees would result in increased competition in the sale of caskets and reduced casket prices. n133 Mr. Royal Keith, a funeral provider appearing for the NFDA, when asked on cross- ...

... [*1604] area. n134

n133 See, e.g., Teck, Tr. Vol. II, 872-873; Drozda, Tr. Vol. II, 944, 974.

n134Tr. Vol. III, 1422.

b. Providers' basis for imposing "casket handling fees". Proponents of handling fees did not provide evidence to refute that offered by casket retailers and others on the purpose, prevalence and impact of "**casket handling fees**" on the casket market. Funeral provider representatives, for example, did not dispute that "**casket handling fees**" are used to recoup profits and overhead costs lost to third-party casket sales, but defended that purpose on several grounds. n135 Providers' responses to third-party casket sales arise, the trade groups ...

... [*1604] groups concluded that providers who lose casket sales to third parties must, as a result, still forego the recovery of much of their costs and profits that would have been included in the casket sale.

n135 Nor did the NFDA and NSM argue that "**casket handling fees**" are imposed for actual services rendered in "handling" consumer-supplied caskets. Many witnesses, including funeral directors, testified that providers incur no additional labor or insurance costs when third-party ...

... [*1604] III, 1044-1045; Starks, funeral director, HX-41 at 11, Tr. Vol. II, 369; and Drozda, funeral director/casket retailer, Tr. Vol. II, 897.

Those groups asserted that the imposition of "**casket handling fees**" is an isolated, non-discriminatory practice that fairly allocates providers' overhead costs and profits; the purpose of the fee is to obtain from consumers who buy third-party caskets consumers' proportionate share of providers' costs and profits for ...

... [*1604] a casket sale to a third-party seller, providers set prices for those services with the knowledge that they will not make a sale in those cases. Finally, the funeral groups concluded that the amount of "**casket handling fees**" is sufficiently regulated by the market, because providers that charge unreasonably high fees will offend consumers and lose market share. n136

n136 R-M-9 at 181-189; R-G-6 at ...

... [*1604] Vol. II, 530, 563; and Nilsen, Tr. Vol. III, 1414-1415. See also, Hahn, FFDA, Tr. Vol. II, 692-694.

c. Commission's conclusion and amendment. The Commission has concluded that substantial "**casket handling fees**" are imposed on consumers by a significant proportion of providers wherever third-party casket sellers exist, and, as a result, frustrate the Rule's "unbundling" requirements and result in the reduction of potential competition in the ...

... [*1604] permitted by § 453.2(b)(4)(iii)(C). The Commission has determined that the latter course is warranted to affirm the Rule's intent to increase consumer choice and reduce barriers to price competition.

n137 Even if "**casket handling fees**" were not widespread, their coverage in the Rule would be necessary because they frustrate the original Rule's "unbundling" provision and impose substantial, unavoidable costs on consumers who make purchase decisions based on their rights under that provision.

n138The Commission ...

... [*1604] casket. See, e.g., Staff Opinion Letter to George W. Lemke, Executive Director, Casket Manufacturers Association of America (March 18, 1985), FTC File No. 215-46, No. XXVIII-211.

"**Casket handling fees**" require consumers to pay two substantial mark-ups, one on the casket they purchase from the third-party seller, and another on the casket they did not buy from the funeral provider. The evidence indicates that handling fees average between \$...

... [*1604] result, and several retailers have curtailed their marketing efforts or withdrawn from the market. Handling fees thus frustrate the purpose of the Funeral Rule—to ensure informed consumer choice and foster a competitive funeral market. The Commission thus concludes that **casket handling fees** are unfair conditions on a consumer's right to decline unwanted items he or she may wish to purchase elsewhere, in violation of section 5 of the FTC Act, and the spirit of the Rule's "unbundling" provision (§ 453.4(b)). n140

n140 Conditioning the furnishing of any funeral good or service upon the payment of a so-called "**casket handling fee**," or any other non-declinable fee not otherwise permitted by the Rule, is an unfair practice for the same reasons articulated by the Commission in declaring "package-only" pricing unfair when it promulgated the Funeral ...

... [*1604] substantial and unavoidable injury on consumers). See R-B-5 (SBP) at 42269-71. [*1605]

Section 453.4(b), however, does not specifically address the practice of conditioning the furnishing of any funeral goods or services on the payment of fees, such as "**casket handling**" fees, because those fees have developed since the Rule's implementation, and because they are not conditioned charges for "goods" or "services"—the conditioned products referred to in that provision. The Commission thus has concluded that so-called "**casket handling**" fees, and other non-declinable fees that are more aptly referred to as "recovery of overhead and profit" fees, need to be separately addressed in the Rule. n141

n141 The Commission prohibits fees that are similar in purpose to "**casket handling fees**" in its Advertising of Ophthalmic Goods and Services Trade Regulation Rule, 16 CFR Part 456. That Rule requires eye doctors to give consumers a copy of their eyeglass prescription, so that consumers can shop ...

... [*1605] section thus prevents eye doctors from charging a fee for goods and services not provided that, in effect, would penalize consumers who wish to comparison shop for ophthalmic goods. Like the non-declinable "**casket handling fee**," the conditional fee prohibited by this Ophthalmic Goods and Services Rule frustrates a consumer's right under the Rule to exercise free choice.

The Commission recognizes the legitimate desire and expectation of funeral industry members to ...

... [*1605] designed to permit funeral providers to have one non-declinable fee to recover general overhead costs-the fee for the basic services of funeral director and staff. Permitting funeral providers to have additional surcharges, whether they are called "**casket handling fees**," or something else, would frustrate the Rule's aim to promote full itemization and informed consumer choice.

To prevent that result and clarify the current requirements of the Rule, the Commission has added paragraph (b)(1)(ii) to § 453.4 of the ...

... [*1605] ship-in cases), outer burial containers, and alternative containers. n142

n142 See, e.g., the evidence cited at note 136, supra.

Providers asserted that the impact of a ban on imposing separate, non-declinable **casket handling fees**, in addition to the non-declinable professional services fee, would be increased professional service fees to all consumers. The funeral provider industry made the same argument in the original proceeding regarding the effect of consumer declinations ...

[FOCUS!](#) [Save As ECLIPSE](#)

[More Like This](#) | [More Like Selected Text](#)

[View Printable Page](#) | [Deliver Documents](#)

Cite List	KWIC	Full Text
---------------------------	----------------------	---------------------------

[prev](#) ◀ Document 4 of 4 ▶ [next](#)

Source: Federal Register and CFR, Combined
Search Terms: "casket handling fee"
Client: drafting
View: KWIC
Date/Time: Sunday, February 28, 1999 - 7:33 PM EST

[Search](#) | [Get a Document](#) | [Check a Citation](#)
[Source Directory](#) | [History](#) | [ECLIPSE](#) | [Options](#) | [Feedback](#) | [Sign-Off](#) | [Help](#)
[About LEXIS-NEXIS](#) | [Terms and Conditions](#)



Copyright © 1998 LEXIS-NEXIS, a division of Reed Elsevier Inc. All rights reserved.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0832/P1

MDK:.....

cmh

D-NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

by 11:00am tomorrow

gen cat

1 **AN ACT** *gen cat*; relating to: reimbursement of certain funeral and burial expenses by
 2 counties and American Indian tribes, sales of cemetery merchandise, caskets
 3 and outer burial containers, provisions of burials by cemetery authorities,
 4 permits for certain funeral services held in funeral services facilities, the
 5 amount of irrevocable burial trusts, disclosures required for burial trusts,
 6 granting rule-making authority and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version of this draft.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows: X

7 **SECTION 1.** 49.30 (1) (b) of the statutes is amended to read:
 8 49.30 (1) (b) The lesser of \$1,000 [✓] \$3,500 or the funeral and burial expenses not
 9 paid by the estate of the deceased and other persons.

1 **SECTION 2.** 49.30 (1m) (a) of the statutes is renumbered 49.30 (1m).^X

2 **SECTION 3.** 49.30 (1m) (b) of the statutes is repealed.^X

3 **SECTION 4.** 49.30 (2) of the statutes is amended to read:^X

4 49.30 (2) From the appropriation under s. 20.445 (3) (dz), the department shall
5 reimburse a county or applicable tribal governing body or organization for any
6 amount that the county or applicable tribal governing body or organization is
7 required to pay under sub. (1). From the appropriation under s. 20.445 (3) (dz), the
8 department shall reimburse a county or applicable tribal governing body or
9 organization for cemetery expenses or for funeral and burial expenses for persons
10 described under sub. (1) that the county or applicable tribal governing body or
11 organization is not required to pay under subs. (1) and (1m) only if the department
12 approves the reimbursement due to unusual circumstances. The department shall[✓]
13 promulgate rules establishing requirements and procedures with which a county
14 must comply to be eligible for reimbursement under this subsection.[✓]

History: 1973 c. 147, 333; 1975 c. 39, 224; 1979 c. 106; 1981 c. 20; 1985 a. 29, 176, 332; 1989 a. 31, 239; 1995 a. 27, 289; 1997 a. 27.

15 **SECTION 5.** 134.89 of the statutes is created to read:

16 **134.89 Cemetery merchandise, caskets and outer burial containers.**[✓]

17 (1) In this section:

18 (a) "Cemetery merchandise" has the meaning given in s. 157.061 (3).^X

19 (b) "Outer burial container" has the meaning given in s. 157.061 (11g).^X

20 (c) "Person" does not include a person issued a funeral director's license under
21 ch. 445 or an operator of a funeral establishment, as defined in s. 445.01 (6).[✓]

22 (2) No person may sell or offer to sell a casket, outer burial container or
23 cemetery merchandise unless the person furnishes to the buyer a notice set out in
24 not less than 8-point boldface type that states each of the following:

1 (a) That the seller is not a funeral director, is not licensed by the funeral
2 directors examining board and may not engage in the business of a funeral director.

3 (b) That the seller is not subject to state laws and rules governing funeral
4 establishments.

5 (c) If a casket is sold, that federal law prohibits a funeral director from charging
6 a handling fee for a casket that is supplied by a party other than the funeral director.

7 (d) That the buyer enters into an agreement to purchase the casket, outer
8 burial container or cemetery merchandise at his or her own risk.

9 (e) That the buyer may contact the department of agriculture, trade and
10 consumer protection regarding complaints about unfair trade practices.

11 (f) If the person is a cemetery authority, cemetery salesperson or preneed seller
12 that is registered by the department of regulation and licensing under subch. VII of
13 ch. 440, that the buyer may contact the department regarding a complaint about the
14 sale but that, depending on the nature of the complaint, ~~the~~ the department may
15 not have any authority regarding the complaint.

16 (3) Any person who violates sub. (2) may be required to forfeit not more than
17 \$5,000.

18 SECTION 6. 157.114^X of the statutes is created to read:

19 157.114 Duty to provide for burials. A cemetery authority shall, insofar as
20 practicable, provide for burials during each season, including winter. Nothing in this
21 section may be construed to prohibit a cemetery authority from charging a
22 reasonable fee to recover the costs related to providing for a burial during difficult
23 weather conditions.

24 SECTION 7. 440.08 (2) (a) 37m. of the statutes is created to read:

1 440.08 (2) (a) 37m. Funeral services facility: June 1 of each odd-numbered
2 year; \$47.

3 SECTION 8. 440.92 (4) (a) (intro.) of the statutes is amended to read:

4 440.92 (4) (a) (intro.) Any person who sells or solicits the sale of cemetery
5 merchandise under a preneed sales contract is not required to be registered under
6 sub. (1) and the requirements of sub. (3) (a) and (b) do not apply to the sale if all
7 payments received under the preneed sales contract are trusted as required under
8 s. 445.125 (1) (a) 1. and (am) or if all of the following conditions are met:

History: 1989 a. 307; 1991 a. 16, 32, 39, 269; 1993 a. 16; 1995 a. 27 ss. 6605, 9116 (5); 1995 a. 295; 1997 a. 79, 191.

9 SECTION 9. 445.01 (6) of the statutes is amended to read:

10 445.01 (6) "Funeral establishment" means any building or part of a building
11 used and held out to the public as being used in the care and preparation for burial
12 or transportation of dead human bodies or for holding or conducting of funeral
13 services. "Funeral establishment" does not include a funeral services facility or a
14 building or part of a building that is erected under s. 157.11 (1) for holding or
15 conducting funeral services if dead human bodies are not cared for or prepared for
16 burial or transportation in the building. A funeral establishment must contain a
17 preparation room equipped with tile, cement or composition floor, necessary
18 drainage and ventilation and contain necessary instruments and supplies for the
19 preparation and embalming of dead human bodies for burial, transportation or other
20 disposition.

History: 1975 c. 39 ss. 648m, 649, 649g, 732 (2); 1975 c. 199; 1977 c. 272 s. 98; 1979 c. 175 ss. 29, 30, 53; 1979 c. 221 ss. 660, 2202 (45); Stats. 1979 s. 445.01; 1981 c. 20; 1983 a. 189, 485; 1993 a. 100.

21 SECTION 10. 445.01 (6m) of the statutes is created to read:

22 445.01 (6m) "Funeral services facility" means any building or part of a
23 building, other than a funeral establishment, private residence, church or lodge hall,
24 in which an operator of a funeral establishment holds or conducts funeral services.

1 **SECTION 11.** 445.04 (1) of the statutes is amended to read:

2 445.04 (1) The Except for funeral services held or conducted in a funeral
 3 services facility for which a permit has been issued under s. 445.105 (1m), the
 4 business of a funeral director must be conducted in a funeral establishment equipped
 5 for the care and preparation for burial or transportation of dead human bodies. What
 6 shall be deemed “necessary equipment” shall be defined in the rules.

History: 1971 c. 301; 1975 c. 39 ss. 653, 732 (2); 1975 c. 199; 1977 c. 29, 418; 1979 c. 175 s. 29; 1979 c. 221 s. 661; Stats. 1979 s. 445.04; 1981 c. 162, 380; 1983 a. 485; 1991 a. 39; 1995 a. 27 s. 9126 (19).

7 **SECTION 12.** 445.095 (2) (c) of the statutes is amended to read:

8 445.095 (2) (c) Only one funeral director apprenticeship shall be recognized by
 9 the examining board at any one establishment in a current year that has had less
 10 than 150 funeral services, as determined under par. (e), or prepared less than 150
 11 bodies for burial or shipment during the preceding year.

History: 1971 c. 164, 228; 1975 c. 39 s. 732 (2); 1975 c. 199; 1977 c. 29; 1979 c. 175 ss. 29, 53; 1979 c. 221 ss. 662, 2202 (45); Stats. 1979 s. 445.095; 1981 c. 20, 162, 380; 1981 c. 391 s. 211; 1983 a. 485; 1991 a. 39; 1995 a. 27 s. 9130 (4); 1997 a. 3.

12 **SECTION 13.** 445.095 (2) (d) of the statutes is amended to read:

13 445.095 (2) (d) The examining board may recognize a 2nd funeral director
 14 apprenticeship at a funeral establishment during the current year that has had 150
 15 funerals or more, as determined under par. (e), and has prepared 150 bodies or more
 16 for burial or shipment during the preceding year, provided that full-time
 17 employment is given to at least 2 licensed funeral directors at such funeral
 18 establishment.

History: 1971 c. 164, 228; 1975 c. 39 s. 732 (2); 1975 c. 199; 1977 c. 29; 1979 c. 175 ss. 29, 53; 1979 c. 221 ss. 662, 2202 (45); Stats. 1979 s. 445.095; 1981 c. 20, 162, 380; 1981 c. 391 s. 211; 1983 a. 485; 1991 a. 39; 1995 a. 27 s. 9130 (4); 1997 a. 3.

19 **SECTION 14.** 445.095 (2) (e) of the statutes is created to read:

20 445.095 (2) (e) For purposes of pars. (c) and (d), the number of funeral services
 21 held at a funeral establishment during a year shall include the number of funeral
 22 services held during that year at any funeral services facility for which the operator
 23 of the funeral establishment has been issued a permit under s. 445.105 (1m).

1 SECTION 15. 445.105 (title) of the statutes is amended to read:

2 445.105 (title) **Funeral establishment and funeral services facility**

3 **permits.**

4 History: 1975 c. 39 s. 732 (2); 1977 c. 29, 418; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.105; 1987 a. 27; 1991 a. 39.

4 SECTION 16. 445.105 (1m) of the statutes is created to read:

5 **445.105 (1m)** No operator of a funeral establishment may hold or conduct

6 funeral services in a funeral services facility unless a permit for the funeral

7 establishment has been issued under sub. (1) and the operator of the funeral

8 establishment has been issued a permit for the funeral services facility by the

9 examining board under this subsection. An operator of a funeral services

10 establishment that has been issued a permit for a funeral services facility under this

11 subsection shall conspicuously display the permit in the funeral service facility.

12 SECTION 17. 445.105 (3) of the statutes is amended to read:

13 445.105 (3) Applications for funeral establishment and funeral services facility

14 permits shall be made on forms provided by the department and filed with the

15 department and shall be accompanied by the fee specified under s. 440.05 (1). The

16 renewal date and renewal fee for a funeral establishment or funeral services facility

17 permit are specified under s. 440.08 (2) (a).

18 History: 1975 c. 39 s. 732 (2); 1977 c. 29, 418; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.105; 1987 a. 27; 1991 a. 39.

18 SECTION 18. 445.105 (4) of the statutes is amended to read:

19 445.105 (4) Violations of this chapter or any rules or regulations of the

20 examining board committed by any person, or an officer, agent or employe with the

21 knowledge or consent of any person operating such funeral establishments or funeral

22 services facilities shall be considered sufficient cause for reprimand or for limitation,

No Bold

9

11

1 suspension or revocation of such funeral establishment or funeral services facility
2 permit.

3 **History:** 1975 c. 39 s. 732 (2); 1977 c. 29, 418; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.105; 1987 a. 27; 1991 a. 39.

3 **SECTION 19.** 445.12 (6) of the statutes is amended to read:

4 445.12 (6) No licensed funeral director or operator of a funeral establishment
5 may operate a mortuary ~~or~~ funeral establishment or funeral services facility that is
6 located in a cemetery or that is financially, through an ownership or operation
7 interest or otherwise, connected with a cemetery. No licensed funeral director or his
8 or her employe may, directly or indirectly, receive or accept any commission, fee,
9 remuneration or benefit of any kind from any cemetery, mausoleum or crematory or
10 from any owner, employe or agent thereof in connection with the sale or transfer of
11 any cemetery lot, outer burial container, burial privilege or cremation, nor act,
12 directly or indirectly, as a broker or jobber of any cemetery property or interest
13 therein.

14 **History:** 1973 c. 272; 1975 c. 39, 199; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.12; 1983 a. 485; 1989 a. 307; 1993 a. 100; 1995 a. 27 s. 9126 (19); 1995 a. 295.

14 **SECTION 20.** 445.125 (1) (a) 2. of the statutes is amended to read:

15 445.125 (1) (a) 2. Notwithstanding s. 701.12 (1), ~~such agreements an~~
16 agreement under subd. 1. may be made irrevocable ~~as to the first \$2,000 of the funds~~
17 paid under the agreement by each depositor.

18 **History:** 1973 c. 227; 1977 c. 40; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.125; 1981 c. 64; 1983 a. 448, 485, 538; 1985 a. 29; 1989 a. 307; 1991 a. 39, 221; 1995 a. 295.

18 **SECTION 21.** 445.125 (1) (am) of the statutes is created to read:

19 445.125 (1) (am) Before a beneficiary accepts any payment under an agreement
20 under par. (a), the beneficiary shall, in writing that is clear and conspicuous, disclose
21 to the depositor a list of all merchandise and services that are provided under the
22 agreement and all relevant information concerning the price of the merchandise and
23 services, including a statement as to whether the purchase price of the merchandise

1 and services is guaranteed at the time that the first payment under the agreement
2 is made or whether the purchase price is to be determined at the time of need.

3 SECTION 22. 445.13 (1) of the statutes is amended to read:

4 445.13 (1) Subject to the rules promulgated under s. 440.03 (1), the examining
5 board may make investigations, subpoena witnesses, conduct hearings, limit,
6 suspend or revoke a license of a funeral director, a certificate of registration of an
7 apprentice or a permit of an operator of a funeral establishment, including a permit
8 issued for a funeral services facility, and reprimand a funeral director, apprentice or
9 operator of a funeral establishment for any violation of 15 USC 45 and 57, of this
10 chapter or of any rule of the department of health and family services or the
11 examining board, for unprofessional conduct, including misrepresentation or fraud
12 in obtaining the license, permit or certificate of registration, or for any violation of
13 this chapter or any rule of the examining board by an agent authorized by the funeral
14 director or operator of the funeral establishment under s. 445.125 (3m) (b) 2. a.

add a scored space

History: 1975 c. 39 ss. 657j, 657o, 732 (2); 1977 c. 418; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.13; 1983 a. 485; 1985 a. 315; 1995 a. 27 s. 9126 (19); 1995 a. 295; 1997 a. 191, 237.

15 SECTION 23. Initial applicability.

16 (1) The treatment of sections 49.30 (1) (b), (1m) (b) and (2) of the statutes first
17 applies to funeral and burial expenses incurred on the the effective date of this
18 subsection.

19 (2) The treatment of section 134.89 of the statutes first applies to sales or offers
20 to sell that are made on the effective date of this subsection.

21 (3) The treatment of sections 440.92 (4) (a) (intro.) and 445.125 (1) (a) 2. and
22 (am) of the statutes first applies to contracts and agreements entered into on the
23 effective date of this subsection.

1 (4) The treatment of section 445.13 (1) of the statutes first applies to
2 unprofessional conduct and violations that occur on the effective date of this
3 subsection.

4 **SECTION 24. Effective date.**

5 (1) This act takes effect on the first day of the 6th month beginning after
6 publication.

7

(END)

0-NOTE

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0832/P1dn
MDK.....

MDK

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

**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

Mark Krause }
 Dean Dickinson } - w
 Pat Essie
 Ashley Moore
 Aaron - Shibilski

Bill Xelin MA's Corp
 assistance provisions

~~Funeral services facility~~
 make explicit
 - NO need to
 have licensed
 funeral director
 at "class B"
~~Funeral~~
 - on titled to display name
 in class B

MA - \$1000 to \$3500
 - item 4 of 10/27/98 MEMO

County reimbursement

- (1) General relief - current law \$1000
 - services + casket + burial vault
- (2) MA reimbursement:
 + \$1000 (sub. to \$3500 cap)

~~auth unified trust
 for purposes of MA~~

(NOTE)

~~cash adv items
 \$ fun needs to fun
 shd be itemized
 (same treatment)~~

~~change name to
 class B~~

- FE
 class A class B

~~shd be allowed to
 have more than
 class B~~

~~exc adv funds
 shd be reported
 to Cr. fund director
 → add to 445-185 (1) (am)~~

+ check
 5445-125

~~call unified burial trust
 & sub. to estate recovery~~

int'l only
- fun director may sell

~~same~~ people who may also sell
ins product

Shd be allowed to

sell trust agreement to
(see fun rules)
3 get rid of

~~discuss~~ unified trust
for MA & C countries are doing
their own thing

○ FTC rule → can reach +
- prior list contact + out b.
center

get copies of rule from
Mark Kram

How ch 134 to ch 157

have TAT talk about
to Dec

MALM & LA FAVE

Attorneys at Law

ROLAND J. WEBER (1942-1989)
GEORGE S. RAITHEL (RETIRED)
TIMOTHY V. MALM
THOMAS W. LA FAVE

(414) 964-5250
FAX (414) 964-8085

OF COUNSEL:
T. LLOYD LaFAVE
Patent Attorney

Legal Assistants:
Patricia J. Pfrang
Cherlyn K. Gullicksen

March 17, 1999

Krause Funeral Home, Inc.
9000 West Capitol Drive
Milwaukee, Wisconsin 53222

Attention: Mark Krause

Re: Proposed legislation

Dear Mark:

I have completed my research and analysis of the proposed FSA legislation. The task was more time consuming than I originally anticipated. I enclose my six Memorandums on the various parts of the proposed bill.

I broke the analysis into six parts so you could select which Memorandums to share with others. For instance, Memorandum 1 is not intended for distribution. I was surprised when I researched Federal Law and discovered an argument could be made capping irrevocable funeral trusts at \$1,500. I don't think this will happen because Title 19 attorneys generally agree that the funeral code is the only limit for Title 19 eligibility. If the \$2,000 cap is eliminated, chances are that it will be accepted by Title 19.

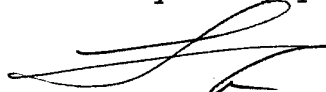
These Memorandums were drafted such that the Legislative Reference Bureau attorneys might read them. It's my suggestion that the new 134.89 (Memorandum 4) be placed in Chapter 157, a more logical and better location.

I can easily turn these Memorandums into an article for a newsletter or an announcement for FSA members if you so choose.

I also enclose a Milwaukee Journal article from Monday's paper. It appears to me that the WFDA is attempting to require year around burials.

Please don't hesitate to call me with any questions.

Very truly yours,



Thomas W. La Fave

TWL

5900 North Port Washington Road, Suite 210, Milwaukee, Wisconsin 53217-4565

MEMORANDUM 1

Date: March 16, 1999
From: TWL
To: Funeral Alliance-Attention: Mark Krause
Subject: Irrevocable Burial Trusts 445.125(1)(a)2

In my analysis of this issue, I researched the United States Code and the Code of Federal Regulations dealing with funerals and trusts as it applies to Medicaid. Based upon my research, a plausible argument would be made that federal law allows states to cap these trusts at \$1,500. However, Wisconsin's Department of Health and Family Services currently interprets Section 445.125(1)(a)2 as setting the maximum that may be irrevocably trusted. If a change in state law is made, the Department will re-visit this issue and could conceivably interpret federal law as capping irrevocable burial trusts at \$1,500, despite the change in state law. However, I think this unlikely because attorneys who practice in this area commonly believe that Wisconsin Statutes governs this issue and not federal law.

MEMORANDUM 2

Date: March 16, 1999
From: TWL
To: Funeral Alliance-Attention: Mark Krause
Subject: Reimbursement of Burial Expenses by Counties and American Indian Tribes

The proposed legislation increases the reimbursements from counties and American Indian Tribes for estates of public assistance recipients from \$1,000 to \$3,500 (as long as the total funeral charges do not exceed \$3,500). As noted by the legislative Reference Bureau, the \$1,000 cap for cemetery expenses remains unchanged.

j:\k\krau871.mem

MEMORANDUM 3

Date: March 16, 1999
From: TWL
To: Funeral Alliance-Attention: Mark Krause
Subject: Funeral Service Facilities

The proposed legislation sets forth a statutory scenario such that a funeral home must obtain a permit from the Funeral Examining Board and display the permit in the funeral service facility to conduct funeral services on its premises, private residence, church or lodge hall. (Sections 440.92(4)(a)(intro); 445.01(6) & (6m); 445.04(1); 445.105(1m) & (3) & (4); 445.12(6); 445.13(1).

The legislation also specifies that funeral services in a funeral service facility are included in the 150 threshold in determining the funeral/body requirements for apprenticeship rules. (Sections 445.095(2)(c),(d) & (e).

MEMORANDUM 4

Date: March 16, 1999
From: TWL
To: Funeral Alliance-Attention: Mark Krausc
Subject: Year Round Burials 157.114

The proposed legislation creates a new section in Chapter 157. The new section requires cemeteries to provide burials year round, with a provision that allows increased charges in adverse weather. Violation of the new section, subjects the violator to the penalties in section 157.64:

157.64. Penalties

(1) In addition to or in lieu of other remedies provided by law, any person who violates this subchapter or any rule promulgated under this subchapter may be required to forfeit not more than \$200 for each separate offense. Each day of continued violation constitutes a separate offense.

(2) Any person who intentionally does any of the following may be fined not more than \$1,000 or imprisoned for not more than 90 days or both:

(a) Violates s. 157.08(2)(b), 157.11(9g) or 157.12(2)(b), (c) or (d) or (4)(b).

(b) Fails to handle funds for the improvement and care of a cemetery as required in s. 157.11 or 157.125.

(c) Fails to deposit or invest care funds or preneed trust funds as required in s. 157.19.

(d) Fails to file a report or files an incomplete, false or misleading report under s. 157.62(1) or (2).

(e) Fails to maintain records as required in s. 157.62(3) and (4).

(f) Files a false or misleading certification under s. 157.63.

(g) Violates s. 157.111.

(3) Any person who intentionally commits an act specified under sub, (2)(a) to (f) with intent to defraud may be punished for theft under s. 943.20.

MEMORANDUM 5

Date: March 16, 1999
From: TWL
To: Funeral Alliance-Attention: Mark Krausc
Subject: Notice and Sales of Cemetery Merchandise 134.89

The proposed legislation creates section 134.89. Chapter 134 is a collection of miscellaneous trade regulations.

The proposed statute prohibits persons, other than licensed funeral directors, from selling cemetery merchandise and other burial containers without providing the consumer with certain notices in 8 point bold face type. The notices advise the consumer that the cemetery is not a licensed funeral director subject to state laws governing funeral homes, that a funeral director may not charge a handling fee at the time of need, that the consumer purchases the product at their own risk, and that the buyer may file a complaint with either the Department of Agriculture, Trade & Consumer Protection or the Department of Regulation and Licensing. The statute declares that any person who violates the statute may be required to forfeit up to \$5,000.

What is missing from the statute is clear and unambiguous language authorizing prosecutions by the Attorney General or the aggrieved consumer. It appears there are two options to remedy this situation.

You may wish to consider a sub-section similar to that found at the end of the statute regulating fitness center contracts. Section 134.70(15)(a) provides:

"(15)(a) The department of agriculture, trade and consumer protection and the department of justice shall cooperatively investigate violations of this section or s. 134.705(2) or (4). The department of justice may on behalf of the state:

1. Bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this section or s. 134.705(2) or (4). The court may in its discretion, upon entry of final judgment, award restitution when appropriate to any person suffering loss because of violations of this section if proof of such loss is submitted to the satisfaction of the court.
2. Bring an action in any court of competent jurisdiction for the recovery of civil forfeitures against any person who violates this section or s. 134.705(2) or (4) in an amount not less than \$100 nor more than \$10,000 for each violation.

(am) The department of justice may bring an action in circuit court to recover on a financial commitment maintained under sub. (13) against a fitness center or relevant 3rd party, or both, on behalf of any buyer who does not receive a refund due under sub. (11)(a).

(h) In addition to the remedies otherwise provided by law, any person injured by a violation of this section may bring a civil action for damages under s. 100.20(5). Any person injured by a breach of a contract for fitness center services may bring a civil action to recover damages together with costs and disbursements, including reasonable attorney fees, and such other equitable relief as may be determined by the Court."

An alternative to creating an enforcement procedure under the new 134.89, would be to include the notice statute in Chapter 157. Chapter 157 is entitled "Disposition of Human Remains", and Sec. 157.65 of the Chapter specifically sets forth an enforcement procedure, as follows:

157.65 Enforcement

(1)(a) If the department of regulation and licensing has reason to believe that any person is violating or has violated this subchapter or any rule promulgated under this subchapter and that the continuation of that activity might cause injury to the public interest, the department of regulation and licensing may investigate.

(b) If the department of commerce has reason to believe that any person is violating s. 157.12 or any rule promulgated under s. 157.12 and that the continuation of that activity might cause injury to the public interest, the department of commerce may investigate.

(2) The department of justice or any district attorney, upon informing the department of justice, may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction any violation of this subchapter. The court may, prior to entry of final judgment, make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action, if proof of such loss is submitted to the satisfaction of the court. The department of justice may subpoena persons and require the production of books and other documents, and may request the department of regulation and licensing or the department of commerce to exercise its authority under sub (1) to aid in the investigation of alleged violations of this subchapter.

(3) In lieu of instituting or continuing an action under this section, the department of justice may accept a written assurance of discontinuance of any act or practice alleged to be a violation of this subchapter from the person who has engaged in the act or practice. An assurance entered into under this subsection shall not be considered evidence of a violation of this subchapter, but a violation of the assurance shall be treated as a violation of this subchapter.

If the new statute is placed in Chapter 157, I suggest section 157(3)(b)3 be amended to include the requirement that cemeteries maintain a copy of the notice provided to the buyer.

MEMORANDUM 6

Date: March 16, 1999
From: TWL
To: Funeral Alliance-Attention: Mark Krause
Subject: Disclosure of Prices and Guarantees

The proposed legislation requires that the funeral home describe in writing the funeral merchandise and services selected, including current prices and a statement of whether or not the prices are guaranteed at the time of need, before it accepts monies for a funeral trust. (Section 445.125(a)(9m).