

**2003 DRAFTING REQUEST**

**Bill**

Received: 12/05/2002

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Regulation and Licensing**

By/Representing: **Myra Shelton**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Cemetery - regulation  
Occupational Reg. - misc**

Extra Copies: **PJH**

Submit via email: **YES**

Requester's email: **william.dusso@drl.state.wi.us**

Carbon copy (CC:) to: **christopher.klein@drl.state.wi.us**

**Pre Topic:**

No specific pre topic given

**Topic:**

Regulation of cremation of human remains

**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> |
|--------------|-----------------------|------------------------|------------------------|----------------|-----------------------|-----------------|-----------------|
| /?           | mkunkel<br>12/12/2002 | csicilia<br>12/13/2002 |                        | _____          |                       |                 | S&L<br>Crime    |
| /P1          |                       |                        | jfrantze<br>12/13/2002 | _____          | mbarman<br>12/13/2002 |                 | S&L<br>Crime    |
|              |                       |                        |                        | _____          | mbarman<br>12/13/2002 |                 |                 |

| <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           | mkunkel<br>09/15/2003 | csicilia<br>09/15/2003 | chaugen<br>09/15/2003 | _____          | Inorthro<br>09/15/2003 | Inorthro<br>09/22/2003 |                 |

FE Sent For:

<END>

*At  
intro.*

**2003 DRAFTING REQUEST**

**Bill**

Received: **12/05/2002**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Regulation and Licensing**

By/Representing: **Myra Shelton**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Cemetery - regulation  
Occupational Reg. - misc**

Extra Copies: **PJH**

Submit via email: **YES**

Requester's email: **william.dusso@drl.state.wi.us**

Carbon copy (CC:) to: **christopher.klein@drl.state.wi.us**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Regulation of cremation of human remains

---

**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> |
|--------------|-----------------------|------------------------|------------------------|----------------|-----------------------|-----------------|-----------------|
| /?           | mkunkel<br>12/12/2002 | csicilia<br>12/13/2002 |                        | _____          |                       |                 | S&L<br>Crime    |
| /P1          |                       |                        | jfrantze<br>12/13/2002 | _____          | mbarman<br>12/13/2002 |                 | S&L<br>Crime    |
|              |                       |                        |                        | _____          | mbarman<br>12/13/2002 |                 |                 |

| <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           | mkunkel<br>09/15/2003 | csicilia<br>09/15/2003 | chaugen<br>09/15/2003 | _____          | lnorthro<br>09/15/2003 |                 |                 |

FE Sent For:

<END>

Jacketed  
→ see attached

2003 DRAFTING REQUEST

Bill

Received: 12/05/2002

Received By: mkunkel

Wanted: As time permits

Identical to LRB:

For: Regulation and Licensing

By/Representing: Myra Shelton

This file may be shown to any legislator: NO

Drafter: mkunkel

May Contact:

Addl. Drafters:

Subject: Cemetery - regulation  
Occupational Reg. - misc

Extra Copies: PJH

Submit via email: YES

Requester's email: myra.shelton@drl.state.wi.us ✓

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Regulation of cremation of human remains

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> |
|--------------|-----------------------|------------------------|------------------------|----------------|-----------------------|-----------------|-----------------|
| /?           | mkunkel<br>12/12/2002 | csicilia<br>12/13/2002 |                        | _____          |                       |                 | S&L<br>Crime    |
| /P1          |                       |                        | jfrantze<br>12/13/2002 | _____          | mbarman<br>12/13/2002 |                 |                 |
|              |                       |                        |                        | _____          | mbarman<br>12/13/2002 |                 |                 |

1 eps 9/15/03



re-submitted (fixed e-mail address)

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

FE Sent For:

Ch  
9-15

ch  
pg 9-15

<END>

2003 DRAFTING REQUEST

Bill

Received: 12/05/2002

Received By: mkunkel

Wanted: As time permits

Identical to LRB:

For: Regulation and Licensing

By/Representing: Myra Shelton

This file may be shown to any legislator: NO

Drafter: mkunkel

May Contact:

Addl. Drafters:

Subject: Cemetery - regulation  
Occupational Reg. - misc

Extra Copies: PJH

Submit via email: YES

fixed

Requester's email: myra.shelton@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Regulation of cremation of human remains

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> |
|--------------|-----------------------|------------------------|------------------------|----------------|-----------------------|-----------------|-----------------|
| /?           | mkunkel<br>12/12/2002 | csicilia<br>12/13/2002 |                        | _____          |                       |                 | S&L<br>Crime    |
| /P1          |                       |                        | jfrantze<br>12/13/2002 | _____          | mbarman<br>12/13/2002 |                 |                 |

FE Sent For:

**<END>**



2003 DRAFTING REQUEST

Bill

Received: 12/05/2002

Received By: mkunkel

Wanted: As time permits

Identical to LRB:

For: Regulation and Licensing

By/Representing: Myra Shelton

This file may be shown to any legislator: NO

Drafter: mkunkel

May Contact:

Addl. Drafters:

Subject: Cemetery - regulation  
Occupational Reg. - misc

Extra Copies: PJH

Submit via email: YES

Requester's email: myra.shelton@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Regulation of cremation of human remains

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/?          | mkunkel<br>12/12/2002 | <i>[Signature]</i><br>12/12/02<br>cjs P1 | <i>[Signature]</i><br>12/12/03 | <i>[Signature]</i><br>12/13 |                  |                 |                 |

FE Sent For:

<END>

## Kunkel, Mark

---

**From:** Shelton, Myra  
**Sent:** Wednesday, December 04, 2002 6:31 PM  
**To:** Kunkel, Mark  
**Subject:** Re: Cremation Proposal Bill Drafting Request (2003-04)

Hi Mark,

Hope you had a great Thanksgiving Holiday. The Funeral Directors Examining Board would like LRB 2804/P4 redrafted for the upcoming legislative session with the following changes:

Please ask the LRB drafter to insert two words on page 14 of LRB -2804/P4, on line 2, following the words "the department may make investigations." The two words to be inserted are: ",including inspections."

If you have any questions please let me know. Thanks and have a great rest of the week. Myra

-----Original Message-----

**From:** Hansen, Clete  
**Sent:** Wednesday, August 21, 2002 4:11 PM  
**To:** Shelton, Myra  
**Cc:** Herrera, Oscar-DRL; 'george.petak@zjs.com'  
**Subject:** Cremation Proposal

I met with the following persons today and discussed the inspection provision in our cremation proposal: George Petak (cemetery lobbyist), Erin Longmire (funeral director lobbyist), Tom Hanson (funeral director lobbyist), Glenn Porter and Richard Reisch (cemetery officials) and Connie Schulze (aide of Senator Peggy Rozensweig). The group agreed that the latest drafting request of the Funeral Directors Examining Board is appropriate. The group agreed that there should not be a requirement for routine inspections. The group agreed that inspections should be conducted when the Complaint Screening Panel believes that an inspection should be done as part of the investigative process. Inspections should be complaint-driven. Inspections should be paid for like any other investigation is paid for -- not by a special inspection fee.

Please ask the LRB drafter to insert two words on page 14 of LRB -2804/P4, on line 2, following the words "the department may make investigations." The two words to be inserted are: ",including inspections,"

THUR  
(TODAY)

RE

LRB-2804/P4  
MDK

~~10:00~~ AM  
10:30

js

-1054/P1

By 10 AM  
12/13

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INSERT  
CRIME COMPONENT

RM NOT  
RUN

gen cat.

1 AN ACT ~~to create~~ 15.407 (7), 440.08 (2) (a) 24m. and subchapter VI of chapter 440  
2 ~~[precedes 440.70]~~ of the statutes; **relating to:** regulating the cremation of  
3 human remains, creating a crematory authority council, granting rule-making  
4 authority, and providing penalties.

**Analysis by the Legislative Reference Bureau**

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

For further information see the ~~state~~ <sup>state and local</sup> fiscal estimate, which will be printed as an appendix to this bill.

Fix  
Component

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

5

SECTION 1. 15.407 (7) of the statutes is created to read:

6

15.407 (7) <sup>(8)</sup> CREMATORY AUTHORITY COUNCIL. There is created a crematory authority council in the department of regulation and licensing consisting of the secretary of regulation and licensing or a designee of the secretary, who shall serve as a nonvoting member, and the following persons appointed for 3-year terms:

7

8

9

1 (a) Three persons licensed as funeral directors under ch. 445 who operate  
2 crematories.

3 (b) Three representatives of cemetery authorities, as defined in s. 157.061 (2),  
4 who operate crematories.

5 (c) One public member.

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

7 440.08 (2) (a) 24m. Crematory authority: January 1 of each even-numbered  
8 year; \$53.

9 SECTION 3. Subchapter VI of chapter 440 [precedes 440.70] of the statutes is  
10 created to read:

11 CHAPTER 440

12 SUBCHAPTER VI

13 CREMATORY AUTHORITIES

14 440.70 Definitions. As used in this subchapter:

15 (1) "Authorization form" means a form specified in s. 440.73.

16 (2) "Authorizing agent" means an individual who acts as an authorizing agent  
17 under s. 440.72 or to whom a delegation of authority is made under s. 440.74.

18 (3) "Business entity" has the meaning given in s. 452.01 (3j).

19 (4) "Columbarium" means a building, structure, or part of a building or  
20 structure that is used or intended to be used for the inurnment of cremated remains.

21 (5) "Cremated remains" means all human remains recovered from the  
22 cremation of a human body or body part and the residue of any container or foreign  
23 materials that were cremated with the body or body part.

24 (6) "Cremation" means the process of using heat to reduce human remains to  
25 bone fragments and includes processing or pulverizing the bone fragments.

1 (7) "Cremation chamber" means an enclosed space within which cremation  
2 takes place. ✓

3 (8) "Crematory" means a building or portion of a building within which a  
4 cremation chamber is located. ✓

5 (9) "Crematory authority" means a person who own or operates a crematory. ✓

6 (10) "Funeral director" has the meaning given in s. 445.01 (5). ✓

7 (11) "Funeral establishment" has the meaning given in s. 445.01 (6). ✓

8 (12) "Human remains" means the body or part of the body of a deceased  
9 individual. ✓

10 (13) "Incapacitated" means unable to receive and evaluate information  
11 effectively or to communicate decisions. ✓

12 (14) "Niche" means a space in a columbarium that is used or intended to be used  
13 for the interment of cremated remains. *inurnment*

14 **440.71 Registration; renewal. (1) PROHIBITION.** No person may cremate  
15 human remains unless the department has registered the person as a crematory  
16 authority under sub. (2). ✓

17 **(2) REGISTRATION.** The department shall register a person as a crematory  
18 authority if the person does all of the following:

19 (a) Pays the fee specified in s. 440.05 (1). ✓

20 (b) Submits an application on a form provided by the department that includes  
21 each of the following:

22 1. The name and address of the applicant or the business entity that the  
23 applicant represents.

24 2. The address of the crematory.

1           3. A description of the structure and equipment proposed to be used in  
2 operating the crematory.

3           4. Any other information that the department may require. ✓

4           **(3) RENEWAL.** Renewal applications shall be submitted to the department on  
5 a form provided by the department on or before the applicable renewal date specified  
6 under s. 440.08 (2) (a) and shall include the applicable renewal fee specified under  
7 s. 440.08 (2) (a). ✓

8           **440.72 Authorizing agents.** **(1)** Except as provided in subs. (3) and (4), only  
9 the following may act as an authorizing agent and direct the cremation of the human  
10 remains of a decedent: ✓

11           (a) The decedent's surviving spouse.

12           (b) Any one of the decedent's surviving adult children who confirms in writing  
13 to the crematory authority that all other surviving children have been notified about  
14 the cremation, if the individual specified in par. (a) declines to act as authorizing  
15 agent but does not object to the cremation, or is dead or incapacitated, unless another  
16 surviving adult child of the decedent provides a written objection to the cremation  
17 to the crematory authority. ✓

18           (c) A surviving parent of the decedent, if all the individuals specified in pars.  
19 (a) and (b) decline to act as authorizing agent but do not object to the cremation, or  
20 are dead or incapacitated, unless another surviving parent of the decedent provides  
21 a written objection to the cremation to the crematory authority. ✓

22           (d) A surviving individual related in the closest degree of kinship to the  
23 decedent, as determined under s. 990.001 (16), if all the individuals specified in pars.  
24 (a) to (c) decline to act as authorizing agent but do not object to the cremation, or are

1 dead or incapacitated, unless another surviving individual of the same degree of  
2 kinship provides a written objection to the cremation to the crematory authority.

3 (e) Any other person, if all of the other individuals specified in pars. (a) to (d)  
4 decline to act as authorizing agent but do not object to the cremation, or are dead or  
5 incapacitated.

6 (2) An individual is incapacitated for purposes of sub. (1) if 2 physicians  
7 licensed under subch. II of ch. 448, or one physician licensed under subch. II of ch.  
8 448 and one psychologist licensed under ch. 455, have personally examined the  
9 individual and signed a statement specifying that the individual is incapacitated.  
10 Mere old age, eccentricity, or physical disability, either singly or together, are  
11 insufficient to make a finding that an individual is incapacitated. Neither of the  
12 individuals who make a finding that an individual is incapacitated may be a relative,  
13 as defined in s. 242.01 (11), of the individual.

14 (3) If a decedent's estate is insufficient to pay the expenses related to final  
15 disposition of the decedent's human remains, or if final disposition of the decedent's  
16 human remains is the responsibility of the state or a local unit of government, the  
17 following persons, in the priority listed, may act as an authorizing agent and direct  
18 the cremation of the decedent's human remains:

19 (a) Any individual specified in sub. (1) (a) to (d), unless one of those individuals  
20 objects in writing to the cremation or states in writing that cremation was contrary  
21 to the religious beliefs of the decedent or ~~if~~ the crematory authority determines that  
22 there is any other evidence that cremation was contrary to the religious beliefs of the  
23 decedent.

24 (b) The coroner or medical examiner of the county in which the decedent's death  
25 occurred.

1 (c) The decedent's guardian at the time of the decedent's death. ✓

2 (4) An individual may not act as an authorizing agent unless he or she has  
3 made all reasonable efforts to contact all individuals under sub. (1) ✓ that have  
4 superior authority to act as an authorizing agent and confirmed that such  
5 individuals do not object to the cremation. ✓

6 (5) An individual may act as an authorizing agent, or authorize another  
7 individual to act as an authorizing agent, for purposes of directing the cremation of  
8 his or her own body part. ✓

9 **440.73 Authorization forms.** An authorizing agent may direct the cremation  
10 of the human remains of a decedent only by completing a form that includes all of the  
11 following:

12 (1) The name of the decedent and the date and time of the decedent's death.

13 (2) The name of the authorizing agent and his or her relationship to the  
14 decedent. ✓

15 (3) A statement that the authorizing agent has the authority to authorize the  
16 cremation and either that no other individual has superior authority or that the  
17 authorizing agent has made all reasonable efforts to contact all individuals with  
18 superior authority and such individuals do not object to cremation. ✓

19 (4) A statement that the authorizing agent has no reason to believe that the  
20 decedent's remains contain any device that may be hazardous or cause damage to the  
21 cremation chamber or an individual performing the cremation. ✓

22 (5) The name of the funeral director, funeral establishment, or cemetery that  
23 the authorizing agent authorizes to receive the cremated remains or, if alternative  
24 arrangements are made for receiving the cremated remains, a description of those  
25 arrangements.



1           (6) If known by the authorizing agent, the manner in which the cremated  
2 remains are to be disposed.

3           (7) An itemized list of any valuables on the decedent's person that are to be  
4 removed prior to cremation and returned to the authorizing agent.

5           (8) If a viewing or other services are planned, the date and time of the viewing  
6 or services.

7           (9) The signature of the authorizing agent attesting to the accuracy of all  
8 representations contained on the form. ✓

9           **440.74 Delegation of authority.** An authorizing agent may, in writing,  
10 delegate the authority to direct the cremation of the human remains of a decedent  
11 to another individual. The delegation shall include all of the following: ✓

12           (1) The name and address of the authorizing agent and the relationship of the  
13 authorizing agent to the decedent. ✓

14           (2) The name and address of the individual to whom the delegation is made and  
15 the relationship of the authorizing agent to that individual. ✓

16           **440.75 Liability of authorizing agent.** An authorizing agent is liable for  
17 damages resulting from authorizing the cremation of the human remains of a  
18 decedent. ✓

19           **440.76 Revocation of authorization.** Before a cremation is performed, an  
20 authorizing agent may cancel the cremation by providing the crematory authority  
21 with a written statement revoking the authorization form. ✓ An authorizing agent  
22 who revokes an authorization form shall provide the crematory authority with  
23 written instructions regarding the final disposition of the human remains. ✓

1           **440.77 Delivery and acceptance of human remains. (1)** RECEIPT FOR  
2 DELIVERY. A crematory authority that receives human remains from a person shall  
3 provide the person with a receipt that includes all of the following:

4           (a) The name of the decedent. ✓

5           (b) The date and time that the human remains were delivered.

6           (c) A description of the type of casket or container in which the human remains  
7 were delivered.

8           (d) The name of the person who delivered the human remains and the name  
9 of the funeral establishment or other business entity, if any, with which the person  
10 is affiliated. ✓

11           (e) The name of the person who received the human remains on behalf of the  
12 crematory authority and the name of the funeral establishment or other business  
13 entity, if any, with which the crematory authority is affiliated. ✓

14           (f) The signature of the person who delivered the human remains. ✓

15           (g) The signature of the person who received the human remains on behalf of  
16 the crematory authority. ✓

17           **(2) ACCEPTANCE OF HUMAN REMAINS.** (a) A crematory authority may not refuse  
18 to accept delivery of human remains solely on the basis that the human remains have  
19 not been placed in a casket or have not been embalmed. ✓

20           (b) A crematory authority may refuse to accept delivery of human remains if  
21 any of the following apply:

22           1. The casket or other container used for the human remains has evidence of  
23 leakage of bodily fluids. ✓

1           2. The crematory authority has knowledge of a dispute regarding the cremation  
2 of the human remains, unless the crematory authority receives a copy of a court order  
3 or other documentation indicating that the dispute has been resolved. ✓

4           3. The crematory authority has reason to believe that a representation of the  
5 authorizing agent is not true. ✓

6           4. The crematory authority has reason to believe that the human remains  
7 contain a device that may be hazardous or cause damage to the cremation chamber  
8 or an individual performing the cremation. ✓

9           **440.78 Cremation requirements. (1) DOCUMENTATION.** A crematory  
10 authority may not cremate the human remains of a decedent unless the authority  
11 has received all of the following: ✓

12           (a) An authorization form completed by an authorizing agent. ✓

13           (b) A copy of the cremation permit issued under s. 979.10 (1) (a).

14           (c) If a report for final disposition of a human corpse is required under s. 69.18  
15 (3), a copy of the report. ✓

16           **(2) HOLDING FACILITY.** (a) Upon accepting delivery of human remains, a  
17 crematory authority shall place the human remains in a holding facility until they  
18 are cremated, except that, if the crematory authority obtains knowledge of a dispute  
19 regarding the cremation of the human remains, the crematory authority may, until  
20 the dispute is resolved, return the human remains to the person who delivered the  
21 human remains or the funeral establishment or other business entity with which  
22 that person is affiliated, neither of which may refuse to accept the human remains. ✓

23           (b) A crematory authority shall restrict access to a holding facility to authorized  
24 personnel. ✓

1           **(3) CASKETS AND OTHER CONTAINERS.** (a) A crematory authority may not require  
2 human remains to be placed in a casket before cremation or to be cremated in a  
3 casket. ✓

4           (b) Unless a crematory authority obtains the prior written consent of the  
5 authorizing agent, and except as provided in par. (c), a crematory authority shall  
6 cremate with human remains the casket or other container holding the human  
7 remains or destroy the casket or other container.

8           (c) A container may be used to hold human remains <sup>that are to be cremated</sup> only if the container is  
9 composed of readily combustible materials that are resistant to leakage and spillage,  
10 has the ability to be closed for complete covering of the human remains, is sufficiently  
11 rigid to provide ease in handling, and is able to protect the health and safety of  
12 crematory personnel. ✓

13           **(4) VIEWINGS OR OTHER SERVICES.** A crematory authority may not cremate  
14 human remains before the date and time specified in an authorization form under  
15 s. 440.73 (8). ✓

16           **(5) SIMULTANEOUS CREMATION.** Unless a crematory authority receives the prior  
17 written consent of each authorizing agent, a crematory authority may not  
18 simultaneously cremate the human remains of more than one individual within the  
19 same cremation chamber. ✓

20           **(6) RESIDUE REMOVAL.** Upon completion of each cremation, a crematory  
21 authority shall, insofar as practicable, remove all of the cremated remains from the  
22 cremation chamber.

23           **(7) CONTAINERS FOR CREMATED REMAINS.** A container may be used to hold  
24 cremated remains only if all of the following are satisfied:

1 (a) Except as provided in sub. (8), the container is a single container of sufficient  
2 size to hold the cremated remains. ✓

3 (b) The container may be closed in a manner that prevents the entrance of  
4 foreign materials and prevents leakage or spillage of the cremated remains. ✓

5 (8) EXCESS REMAINS; ADDITIONAL CONTAINER. If cremated remains that a  
6 crematory authority recovers from a cremation chamber do not fit within the  
7 container that the authorizing agent has selected, ✓ the crematory authority shall  
8 return the remainder of the human remains to the authorized agent or authorized  
9 agent's designee in a separate container. ✓

10 (9) IDENTIFICATION SYSTEM. A crematory authority shall maintain an  
11 identification system that ensures the identity of human remains throughout all  
12 phases of the cremation process. ✓

13 **440.79 Deliveries of cremated remains.** A crematory authority may deliver  
14 cremated remains to another person only by making the delivery in person or by  
15 using a delivery service that has a system for tracking the delivery. The crematory  
16 authority shall obtain a signed receipt from the person to whom the cremated  
17 remains are delivered. The crematory authority shall ensure that the receipt  
18 includes all of the following:

19 (a) The name of the decedent. ✓

20 (b) The date and time that the cremated remains were delivered. ✓

21 (c) The name and signature of the person to whom the cremated remains were  
22 delivered and the name of the funeral establishment or other business entity, if any, ✓  
23 with which the person is affiliated.

24 (d) The name and signature of the person who delivered the cremated remains  
25 on behalf of the crematory authority. ✓

1           **440.80 Disposition of cremated remains. (1) RESPONSIBLE PARTY.** (a)  
2 Except as provided in par. (b), the authorizing agent is responsible for determining  
3 the manner in which cremated remains are disposed. ✓

4           (b) If the authorizing agent fails to determine the manner in which cremated  
5 remains are disposed, the crematory authority shall, no sooner than 30 days after  
6 cremation, deliver the cremated remains to the person who delivered the human  
7 remains to the crematory authority for cremation or the funeral establishment or  
8 other business entity with which that person is affiliated, neither of which may  
9 refuse to accept the cremated remains. No sooner than 60 days after the cremated  
10 remains are delivered under this paragraph, the person to whom they are delivered  
11 may determine the manner in which the cremated remains are disposed and shall  
12 make a written record of any determination that is made. ✓

13           (c) The authorizing agent or the decedent's estate, or both, are liable for all  
14 reasonable expenses incurred in delivering and disposing of cremated remains under  
15 par. (b). ✓

16           **(2) MANNER OF DISPOSITION.** A person may dispose of cremated remains only in  
17 one of the following manners:

18           (a) Placing the remains in a grave, niche, or crypt. ✓

19           (b) Disposing of the remains in any other lawful manner, but only if the remains  
20 are reduced to a particle size of one-eighth inch or less. ✓

21           **(3) COMMINGLING.** Without the prior written consent of each authorizing agent,  
22 no person may do any of the following:

23           (a) Dispose of cremated remains in a manner or location that commingles the  
24 remains with the cremated remains of another individual. ✓

25           (b) Place cremated remains of more than one individual in the same container. ✓

1 (4) PROHIBITED SALES. A crematory authority may not do any of the following:

2 (a) Sell any material or device, including a prosthetic or medical device of a  
3 decedent, that is obtained from cremating the human remains of the decedent. ✓

4 (b) Resell any casket or other container that has been used for cremating  
5 human remains. ✓

6 **440.81 Records.** (1) A crematory authority shall maintain a permanent  
7 record of each cremation at its place of business consisting of the name of the  
8 decedent, the date of the cremation, and a description of the manner in which the  
9 cremated remains are disposed.

10 (2) A crematory authority shall maintain as permanent records the  
11 documentation specified in s. 440.78 (1) and copies of receipts under ss. 440.77 (1)  
12 and 440.79.

13 **440.82 Exemptions from liability.** (1) Except as provided in sub. (2), a  
14 crematory authority is immune from civil liability for damages resulting from  
15 cremating human remains, including damages to prosthetic or medical devices or  
16 valuables of the decedent, if the authority has complied with the requirements of this  
17 subchapter. ✓

18 (2) A crematory authority is liable for damages resulting from the authority's  
19 failure to return valuables specified on an authorization form under s. 440.73 (7).

20 ~~440.83~~ <sup>83</sup> **Electronic transmission permitted.** Any statement required to be  
21 in writing under s. 440.72 (1) or (3), 440.74, 440.76, 440.78 (3) (b) or (5), or 440.80 (3)  
22 may be transmitted by facsimile. ✓

23 ~~440.84~~ <sup>84</sup> **Rules.** The department may promulgate rules interpreting or  
24 administering the requirements of this subchapter. ✓

*including inspections*

85

1 ~~440.32~~ **Discipline.** (1) Subject to the rules promulgated under s. 440.03 (1),  
2 the department may make investigations or conduct hearings to determine whether  
3 a violation of this subchapter or any rule promulgated under this subchapter has  
4 occurred.

5 (2) Subject to the rules promulgated under s. 440.03 (1), the department may  
6 reprimand an individual registered under this subchapter or deny, limit, suspend,  
7 or revoke a registration under this subchapter if the department finds that the  
8 applicant or individual has done any of the following:

9 (a) Made a material misstatement in an application for a registration or  
10 renewal of a registration.

11 (b) Engaged in conduct while practicing as a crematory authority that  
12 evidences a lack of knowledge or ability to apply professional principles or skills.

13 (c) Subject to ss. 111.321, 111.322, and 111.335, been arrested or convicted of  
14 an offense committed while registered under this subchapter.

15 (d) Advertised in a manner that is false, deceptive, or misleading.

16 (e) Advertised, practiced, or attempted to practice as a crematory authority  
17 under another person's name.

18 (f) Violated this subchapter or any rule promulgated under this subchapter.

86

19 ~~440.32~~ **Penalties.** (1) Any individual who violates this subchapter or rule  
20 promulgated under this subchapter may be fined not more than \$1,000 or imprisoned  
21 for not more than 6 months or both.

22 (2) In addition to or in lieu of the penalties under sub. (1) and the remedies  
23 under s. 440.01 (2), an individual who violates this subchapter or any rule  
24 promulgated under this subchapter may be required to forfeit not more than \$1,000

85



1 for each separate violation. Each day of continued violation constitutes a separate  
2 violation.

3 **SECTION 4. Nonstatutory provisions.** Notwithstanding section 15.405 (f) of  
 4 the statutes, as created by this act, one of the initial members of the crematory  
 5 authority council appointed under section 15.407 (a) of the statutes and one of the  
 6 initial members of the crematory authority council appointed under section 15.407  
 7 (b) of the statutes shall be appointed for initial terms that expire on July 1, 2004;  
 8 one of the initial members of the crematory authority council appointed under  
 9 section 15.407 (a) of the statutes, one of the initial members of the crematory  
 10 authority council appointed under section 15.407 (b) of the statutes, and the  
 11 initial public member shall be appointed for initial terms that expire on July 1, 2005;  
 12 and the other 2 initial members of the crematory authority council shall be appointed  
 13 for terms that expire on July 1, 2006.

14 **SECTION 5. Effective date.**

15 (1) This act takes effect on the first day of the 7th month beginning after  
16 publication.

17 (END)

terms of the

(intro.)

as created by this act

as created by this act

d-note

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1054/P1dn  
MDK:.....

9/5

Myra Shelton:

P4

the following:

This redraft is identical to 2001 LRB-2804/P1, except for ~~some technical changes to the nonstatutory initial appointments.~~

~~Is proposed s. 440.83 necessary? (The numbering of that section in last session's draft was proposed s. 440.825.) Note that section 137.05, stats., which was created last session, provides: "Unless otherwise prohibited by law, any document that is required by law to be submitted in writing to a governmental unit and that requires a written signature may be submitted by transforming the document into electronic format, but only with the consent of the governmental unit that is to receive the document." Although "electronic format" isn't defined, I think it would include faxes. Let me know if you want to eliminate proposed s. 440.83.~~

Finally, I will finalize the bill and prepare an analysis as soon as possible.

INSERT A

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

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1054/P1dnins  
MDK:.....

✓  
INSERT A:

- 1  
2 1. The definition of "niche" is revised to refer to "inurnment" rather than "interment". This  
3 revision makes the definition consistent with the definition of "columbarium".
- 4 2. In proposed s. 440.72 (3) (a), the last clause is changed from an "if" clause to an "unless"  
5 clause.
- 6 3. In proposed s. 440.78 (3) (c), "that are to be cremated" is added following "human  
7 remains".
- 8 4. The dates for the initial terms are advanced by <sup>two</sup> 2 years. Also, there are some technical  
9 changes to the wording of the appointments.
- 10 Also, isn't the liability exemption in proposed s. 440.82 (1) rather broad? Suppose, for  
11 example, that a crematory authority commits negligence that is not addressed by the  
12 subchapter. As drafted, the crematory authority is exempt from liability.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1054/P1dn  
MDK:cjs:jf

December 13, 2002

Myra Shelton:

This redraft is identical to 2001 LRB-2804/P4, except for the following:

1. The definition of "niche" is revised to refer to "inurnment" rather than "interment." This revision makes the definition consistent with the definition of "columbarium."
2. In proposed s. 440.72 (3) (a), the last clause is changed from an "if" clause to an "unless" clause.
3. In proposed s. 440.78 (3) (c), "that are to be cremated" is added following "human remains."
4. The dates for the initial terms are advanced by two years. Also, there are some technical changes to the wording of the appointments.

Also, isn't the liability exemption in proposed s. 440.82 (1) rather broad? Suppose, for example, that a crematory authority commits negligence that is not addressed by the subchapter. As drafted, the crematory authority is exempt from liability.

Finally, I will finalize the bill and prepare an analysis as soon as possible.

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



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## RESEARCH APPENDIX -

**PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Added To File: 12/12/02 (Per MDK)



The drafting file for 2001 LRB - 2804 has been transferred to the drafting file for 2003 LRB - 1054

This cover sheet, the final request sheet, and the final version of the 2001 draft were copied on yellow paper, and returned to the original 2001 drafting file.

For research purposes, because the attached 2001 draft was incorporated into a new 2003 draft, this cover sheet and the complete drafting file was transferred, as a separate appendix, to the 2003 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

The drafting file for 2003 LRB \_\_\_\_\_ has been copied/added to the drafting file for 2003 LRB \_\_\_\_\_

For research purposes, because the attached 2003 draft was incorporated into another 2003 draft, the attached drafting file was copied on yellow paper (darkened/also centered/reduced to 90%), and added, as a appendix, to the new 2003 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

This cover sheet was copied on yellow paper and added to rear of the original 2003 drafting file. The drafting file was then returned, intact, to its folder and filed.

*Done  
AMB*

**Kunkel, Mark**

---

**From:** Klein, Christopher

**Sent:** Tuesday, September 09, 2003 6:05

**To:** Kunkel, Mark

**Subject:** DRL Cremation Draft

Mark, here is the cremation language to add. Please let me know when you think you could make this change.

At the Funeral Director Examining Board's July meeting, the Board made a motion to amend the crematory draft so that the liability provision would be narrowed. Would you kindly submit the following language to the Drafter in order to amend s. 440.82 (2) [*See Page 13, Line 13*]: "A crematory is liable for damages resulting from the authority's intentional misconduct, negligent conduct, or failure to return valuables specified on authorization form under s. 440.73 (7)." That amendment would make a crematory liable for damages that result from intentional misconduct and negligent conduct. As the Drafter's note indicates, the present exemption is extremely broad and this is therefore intended to narrow it. Thanks very much.

Thanks Mark.

Christopher P. Klein  
Executive Assistant  
Department of Regulation & Licensing  
608-266-8608

09/10/2003

O-NOTE

stays

pn  
has been  
pn

Today bn  
4:30

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

STW

INSERT  
1A

1  
2  
3  
4

AN ACT *to create* 15.407 (8), 440.08 (2) (a) 24m. and subchapter VI of chapter 440 [precedes 440.70] of the statutes; **relating to:** regulating the cremation of human remains, creating a Crematory Authority Council, granting rule-making authority, and providing penalties.

**Analysis by the Legislative Reference Bureau**

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

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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

leave a space between the rest of the analysis and the tags

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

5  
6  
7

SECTION 1. 15.407 (8) of the statutes is created to read:

15.407 (8) CREMATORY AUTHORITY COUNCIL. There is created a crematory authority council in the department of regulation and licensing consisting of the

INSERT  
2-7

1 secretary of regulation and licensing or a designee of the secretary, who shall serve  
2 as a nonvoting member, and the following persons appointed for 3-year terms:

3 (a) Three persons licensed as funeral directors under ch. 445 who operate  
4 crematories.

5 (b) Three representatives of cemetery authorities, as defined in s. 157.061 (2),  
6 who operate crematories.

7 (c) One public member.

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

9 440.08 (2) (a) 24m. Crematory authority: January 1 of each even-numbered  
10 year; \$53.

11 SECTION 3. Subchapter VI of chapter 440 [precedes 440.70] of the statutes is  
12 created to read:

13 CHAPTER 440

14 SUBCHAPTER VI

15 CREMATORY AUTHORITIES

16 440.70 Definitions. As used in this subchapter:

17 (1) "Authorization form" means a form specified in s. 440.73.

18 (2) "Authorizing agent" means an individual who acts as an authorizing agent  
19 under s. 440.72 or to whom a delegation of authority is made under s. 440.74.

20 (3) "Business entity" has the meaning given in s. 452.01 (3j).

21 (4) "Columbarium" means a building, structure, or part of a building or  
22 structure that is used or intended to be used for the inurnment of cremated remains.

23 (5) "Cremated remains" means all human remains recovered from the  
24 cremation of a human body or body part and the residue of any container or foreign  
25 materials that were cremated with the body or body part.



1           (6) “Cremation” means the process of using heat to reduce human remains to  
2 bone fragments and includes processing or pulverizing the bone fragments.

3           (7) “Cremation chamber” means an enclosed space within which cremation  
4 takes place.

5           (8) “Crematory” means a building or portion of a building within which a  
6 cremation chamber is located.

7           (9) “Crematory authority” means a person who own or operates a crematory.

8           (10) “Funeral director” has the meaning given in s. 445.01 (5).

9           (11) “Funeral establishment” has the meaning given in s. 445.01 (6).

10          (12) “Human remains” means the body or part of the body of a deceased  
11 individual.

12          (13) “Incapacitated” means unable to receive and evaluate information  
13 effectively or to communicate decisions.

14          (14) “Niche” means a space in a columbarium that is used or intended to be used  
15 for the inurnment of cremated remains.

16           **440.71 Registration; renewal. (1) PROHIBITION.** No person may cremate  
17 human remains unless the department has registered the person as a crematory  
18 authority under sub. (2).

19           (2) REGISTRATION. The department shall register a person as a crematory  
20 authority if the person does all of the following:

21           (a) Pays the fee specified in s. 440.05 (1).

22           (b) Submits an application on a form provided by the department that includes  
23 each of the following:

24           1. The name and address of the applicant or the business entity that the  
25 applicant represents.

1           2. The address of the crematory.

2           3. A description of the structure and equipment proposed to be used in  
3 operating the crematory.

4           4. Any other information that the department may require.

5           **(3) RENEWAL.** Renewal applications shall be submitted to the department on  
6 a form provided by the department on or before the applicable renewal date specified  
7 under s. 440.08 (2) (a) and shall include the applicable renewal fee specified under  
8 s. 440.08 (2) (a).

9           **440.72 Authorizing agents. (1)** Except as provided in subs. (3) and (4), only  
10 the following may act as an authorizing agent and direct the cremation of the human  
11 remains of a decedent:

12           (a) The decedent's surviving spouse.

13           (b) Any one of the decedent's surviving adult children who confirms in writing  
14 to the crematory authority that all other surviving children have been notified about  
15 the cremation, if the individual specified in par. (a) declines to act as authorizing  
16 agent but does not object to the cremation, or is dead or incapacitated, unless another  
17 surviving adult child of the decedent provides a written objection to the cremation  
18 to the crematory authority.

19           (c) A surviving parent of the decedent, if all the individuals specified in pars.  
20 (a) and (b) decline to act as authorizing agent but do not object to the cremation, or  
21 are dead or incapacitated, unless another surviving parent of the decedent provides  
22 a written objection to the cremation to the crematory authority.

23           (d) A surviving individual related in the closest degree of kinship to the  
24 decedent, as determined under s. 990.001 (16), if all the individuals specified in pars.  
25 (a) to (c) decline to act as authorizing agent but do not object to the cremation, or are

1 dead or incapacitated, unless another surviving individual of the same degree of  
2 kinship provides a written objection to the cremation to the crematory authority.

3 (e) Any other person, if all of the other individuals specified in pars. (a) to (d)  
4 decline to act as authorizing agent but do not object to the cremation, or are dead or  
5 incapacitated.

6 (2) An individual is incapacitated for purposes of sub. (1) if 2 physicians  
7 licensed under subch. II of ch. 448, or one physician licensed under subch. II of ch.  
8 448 and one psychologist licensed under ch. 455, have personally examined the  
9 individual and signed a statement specifying that the individual is incapacitated.  
10 Mere old age, eccentricity, or physical disability, either singly or together, are  
11 insufficient to make a finding that an individual is incapacitated. Neither of the  
12 individuals who make a finding that an individual is incapacitated may be a relative,  
13 as defined in s. 242.01 (11), of the individual.

14 (3) If a decedent's estate is insufficient to pay the expenses related to final  
15 disposition of the decedent's human remains, or if final disposition of the decedent's  
16 human remains is the responsibility of the state or a local unit of government, the  
17 following persons, in the priority listed, may act as an authorizing agent and direct  
18 the cremation of the decedent's human remains:

19 (a) Any individual specified in sub. (1) (a) to (d), unless one of those individuals  
20 objects in writing to the cremation or states in writing that cremation was contrary  
21 to the religious beliefs of the decedent or unless the crematory authority determines  
22 that there is any other evidence that cremation was contrary to the religious beliefs  
23 of the decedent.

24 (b) The coroner or medical examiner of the county in which the decedent's death  
25 occurred.

1 (c) The decedent's guardian at the time of the decedent's death.

2 (4) An individual may not act as an authorizing agent unless he or she has  
3 made all reasonable efforts to contact all individuals under sub. (1) that have  
4 superior authority to act as an authorizing agent and confirmed that such  
5 individuals do not object to the cremation.

6 (5) An individual may act as an authorizing agent, or authorize another  
7 individual to act as an authorizing agent, for purposes of directing the cremation of  
8 his or her own body part.

9 **440.73 Authorization forms.** An authorizing agent may direct the cremation  
10 of the human remains of a decedent only by completing a form that includes all of the  
11 following:

12 (1) The name of the decedent and the date and time of the decedent's death.

13 (2) The name of the authorizing agent and his or her relationship to the  
14 decedent.

15 (3) A statement that the authorizing agent has the authority to authorize the  
16 cremation and either that no other individual has superior authority or that the  
17 authorizing agent has made all reasonable efforts to contact all individuals with  
18 superior authority and such individuals do not object to cremation.

19 (4) A statement that the authorizing agent has no reason to believe that the  
20 decedent's remains contain any device that may be hazardous or cause damage to the  
21 cremation chamber or an individual performing the cremation.

22 (5) The name of the funeral director, funeral establishment, or cemetery that  
23 the authorizing agent authorizes to receive the cremated remains or, if alternative  
24 arrangements are made for receiving the cremated remains, a description of those  
25 arrangements.

1           (6) If known by the authorizing agent, the manner in which the cremated  
2 remains are to be disposed.

3           (7) An itemized list of any valuables on the decedent's person that are to be  
4 removed prior to cremation and returned to the authorizing agent.

5           (8) If a viewing or other services are planned, the date and time of the viewing  
6 or services.

7           (9) The signature of the authorizing agent attesting to the accuracy of all  
8 representations contained on the form.

9           **440.74 Delegation of authority.** An authorizing agent may, in writing,  
10 delegate the authority to direct the cremation of the human remains of a decedent  
11 to another individual. The delegation shall include all of the following:

12           (1) The name and address of the authorizing agent and the relationship of the  
13 authorizing agent to the decedent.

14           (2) The name and address of the individual to whom the delegation is made and  
15 the relationship of the authorizing agent to that individual.

16           **440.75 Liability of authorizing agent.** An authorizing agent is liable for  
17 damages resulting from authorizing the cremation of the human remains of a  
18 decedent.

19           **440.76 Revocation of authorization.** Before a cremation is performed, an  
20 authorizing agent may cancel the cremation by providing the crematory authority  
21 with a written statement revoking the authorization form. An authorizing agent  
22 who revokes an authorization form shall provide the crematory authority with  
23 written instructions regarding the final disposition of the human remains.

1           **440.77 Delivery and acceptance of human remains. (1) RECEIPT FOR**  
2 DELIVERY. A crematory authority that receives human remains from a person shall  
3 provide the person with a receipt that includes all of the following:

4           (a) The name of the decedent.

5           (b) The date and time that the human remains were delivered.

6           (c) A description of the type of casket or container in which the human remains  
7 were delivered.

8           (d) The name of the person who delivered the human remains and the name  
9 of the funeral establishment or other business entity, if any, with which the person  
10 is affiliated.

11           (e) The name of the person who received the human remains on behalf of the  
12 crematory authority and the name of the funeral establishment or other business  
13 entity, if any, with which the crematory authority is affiliated.

14           (f) The signature of the person who delivered the human remains.

15           (g) The signature of the person who received the human remains on behalf of  
16 the crematory authority.

17           **(2) ACCEPTANCE OF HUMAN REMAINS.** (a) A crematory authority may not refuse  
18 to accept delivery of human remains solely on the basis that the human remains have  
19 not been placed in a casket or have not been embalmed.

20           (b) A crematory authority may refuse to accept delivery of human remains if  
21 any of the following apply:

22           1. The casket or other container used for the human remains has evidence of  
23 leakage of bodily fluids.

1           2. The crematory authority has knowledge of a dispute regarding the cremation  
2 of the human remains, unless the crematory authority receives a copy of a court order  
3 or other documentation indicating that the dispute has been resolved.

4           3. The crematory authority has reason to believe that a representation of the  
5 authorizing agent is not true.

6           4. The crematory authority has reason to believe that the human remains  
7 contain a device that may be hazardous or cause damage to the cremation chamber  
8 or an individual performing the cremation.

9           **440.78 Cremation requirements. (1) DOCUMENTATION.** A crematory  
10 authority may not cremate the human remains of a decedent unless the authority  
11 has received all of the following:

12           (a) An authorization form completed by an authorizing agent.

13           (b) A copy of the cremation permit issued under s. 979.10 (1) (a).

14           (c) If a report for final disposition of a human corpse is required under s. 69.18  
15 (3), a copy of the report.

16           **(2) HOLDING FACILITY.** (a) Upon accepting delivery of human remains, a  
17 crematory authority shall place the human remains in a holding facility until they  
18 are cremated, except that, if the crematory authority obtains knowledge of a dispute  
19 regarding the cremation of the human remains, the crematory authority may, until  
20 the dispute is resolved, return the human remains to the person who delivered the  
21 human remains or the funeral establishment or other business entity with which  
22 that person is affiliated, neither of which may refuse to accept the human remains.

23           (b) A crematory authority shall restrict access to a holding facility to authorized  
24 personnel.

1           **(3) CASKETS AND OTHER CONTAINERS.** (a) A crematory authority may not require  
2 human remains to be placed in a casket before cremation or to be cremated in a  
3 casket.

4           (b) Unless a crematory authority obtains the prior written consent of the  
5 authorizing agent, and except as provided in par. (c), a crematory authority shall  
6 cremate with human remains the casket or other container holding the human  
7 remains or destroy the casket or other container.

8           (c) A container may be used to hold human remains that are to be cremated only  
9 if the container is composed of readily combustible materials that are resistant to  
10 leakage and spillage, has the ability to be closed for complete covering of the human  
11 remains, is sufficiently rigid to provide ease in handling, and is able to protect the  
12 health and safety of crematory personnel.

13           **(4) VIEWINGS OR OTHER SERVICES.** A crematory authority may not cremate  
14 human remains before the date and time specified in an authorization form under  
15 s. 440.73 (8).

16           **(5) SIMULTANEOUS CREMATION.** Unless a crematory authority receives the prior  
17 written consent of each authorizing agent, a crematory authority may not  
18 simultaneously cremate the human remains of more than one individual within the  
19 same cremation chamber.

20           **(6) RESIDUE REMOVAL.** Upon completion of each cremation, a crematory  
21 authority shall, insofar as practicable, remove all of the cremated remains from the  
22 cremation chamber.

23           **(7) CONTAINERS FOR CREMATED REMAINS.** A container may be used to hold  
24 cremated remains only if all of the following are satisfied:



1 (a) Except as provided in sub. (8), the container is a single container of sufficient  
2 size to hold the cremated remains.

3 (b) The container may be closed in a manner that prevents the entrance of  
4 foreign materials and prevents leakage or spillage of the cremated remains.

5 (8) EXCESS REMAINS; ADDITIONAL CONTAINER. If cremated remains that a  
6 crematory authority recovers from a cremation chamber do not fit within the  
7 container that the authorizing agent has selected, the crematory authority shall  
8 return the remainder of the human remains to the authorized agent or authorized  
9 agent's designee in a separate container.

10 (9) IDENTIFICATION SYSTEM. A crematory authority shall maintain an  
11 identification system that ensures the identity of human remains throughout all  
12 phases of the cremation process.

13 **440.79 Deliveries of cremated remains.** A crematory authority may deliver  
14 cremated remains to another person only by making the delivery in person or by  
15 using a delivery service that has a system for tracking the delivery. The crematory  
16 authority shall obtain a signed receipt from the person to whom the cremated  
17 remains are delivered. The crematory authority shall ensure that the receipt  
18 includes all of the following:

19 (a) The name of the decedent.

20 (b) The date and time that the cremated remains were delivered.

21 (c) The name and signature of the person to whom the cremated remains were  
22 delivered and the name of the funeral establishment or other business entity, if any,  
23 with which the person is affiliated.

24 (d) The name and signature of the person who delivered the cremated remains  
25 on behalf of the crematory authority.

1           **440.80 Disposition of cremated remains. (1) RESPONSIBLE PARTY. (a)**

2           Except as provided in par. (b), the authorizing agent is responsible for determining  
3           the manner in which cremated remains are disposed.

4           (b) If the authorizing agent fails to determine the manner in which cremated  
5           remains are disposed, the crematory authority shall, no sooner than 30 days after  
6           cremation, deliver the cremated remains to the person who delivered the human  
7           remains to the crematory authority for cremation or the funeral establishment or  
8           other business entity with which that person is affiliated, neither of which may  
9           refuse to accept the cremated remains. No sooner than 60 days after the cremated  
10          remains are delivered under this paragraph, the person to whom they are delivered  
11          may determine the manner in which the cremated remains are disposed and shall  
12          make a written record of any determination that is made.

13          (c) The authorizing agent or the decedent's estate, or both, are liable for all  
14          reasonable expenses incurred in delivering and disposing of cremated remains under  
15          par. (b).

16          **(2) MANNER OF DISPOSITION.** A person may dispose of cremated remains only in  
17          one of the following manners:

18               (a) Placing the remains in a grave, niche, or crypt.

19               (b) Disposing of the remains in any other lawful manner, but only if the remains  
20               are reduced to a particle size of one-eighth inch or less.

21          **(3) COMMINGLING.** Without the prior written consent of each authorizing agent,  
22          no person may do any of the following:

23               (a) Dispose of cremated remains in a manner or location that commingles the  
24               remains with the cremated remains of another individual.

25               (b) Place cremated remains of more than one individual in the same container.

1           **(4) PROHIBITED SALES.** A crematory authority may not do any of the following:

2           (a) Sell any material or device, including a prosthetic or medical device of a  
3 decedent, that is obtained from cremating the human remains of the decedent.

4           (b) Resell any casket or other container that has been used for cremating  
5 human remains.

6           **440.81 Records. (1)** A crematory authority shall maintain a permanent  
7 record of each cremation at its place of business consisting of the name of the  
8 decedent, the date of the cremation, and a description of the manner in which the  
9 cremated remains are disposed.

10          **(2)** A crematory authority shall maintain as permanent records the  
11 documentation specified in s. 440.78 (1) and copies of receipts under ss. 440.77 (1)  
12 and 440.79.

13          **440.82 Exemptions from liability. (1)** Except as provided in sub. (2), a  
14 crematory authority is immune from civil liability for damages resulting from  
15 cremating human remains, including damages to prosthetic or medical devices or  
16 valuables of the decedent, if the authority has complied with the requirements of this  
17 subchapter.

18          **(2)** A crematory authority is liable for damages resulting from the authority's  
19 failure to return valuables specified on an authorization form under s. 440.73 (7).

20          **440.83 Electronic transmission permitted.** Any statement required to be  
21 in writing under s. 440.72 (1) or (3), 440.74, 440.76, 440.78 (3) (b) or (5), or 440.80 (3)  
22 may be transmitted by facsimile.

23          **440.84 Rules.** The department may promulgate rules interpreting or  
24 administering the requirements of this subchapter.

*intentional  
misconduct, negligent conduct, or*

1           **440.85 Discipline. (1)** Subject to the rules promulgated under s. 440.03 (1),  
2 the department may make investigations, including inspections, or conduct hearings  
3 to determine whether a violation of this subchapter or any rule promulgated under  
4 this subchapter has occurred.

5           **(2)** Subject to the rules promulgated under s. 440.03 (1), the department may  
6 reprimand an individual registered under this subchapter or deny, limit, suspend,  
7 or revoke a registration under this subchapter if the department finds that the  
8 applicant or individual has done any of the following:

9           (a) Made a material misstatement in an application for a registration or  
10 renewal of a registration.

11           (b) Engaged in conduct while practicing as a crematory authority that  
12 evidences a lack of knowledge or ability to apply professional principles or skills.

13           (c) Subject to ss. 111.321, 111.322, and 111.335, been arrested or convicted of  
14 an offense committed while registered under this subchapter.

15           (d) Advertised in a manner that is false, deceptive, or misleading.

16           (e) Advertised, practiced, or attempted to practice as a crematory authority  
17 under another person's name.

18           (f) Violated this subchapter or any rule promulgated under this subchapter.

19           **440.86 Penalties. (1)** Any individual who violates this subchapter or rule  
20 promulgated under this subchapter may be fined not more than \$1,000 or imprisoned  
21 for not more than 6 months or both.

22           **(2)** In addition to or in lieu of the penalties under sub. (1) and the remedies  
23 under s. 440.85 (2), an individual who violates this subchapter or any rule  
24 promulgated under this subchapter may be required to forfeit not more than \$1,000

1 for each separate violation. Each day of continued violation constitutes a separate  
2 violation.

3 **SECTION 4. Nonstatutory provisions.** Notwithstanding section 15.405 (8)  
4 (intro.) of the statutes, as created by this act, one of the initial terms of the members  
5 of the crematory authority council appointed under section 15.407 (8) (a) of the  
6 statutes, as created by this act, and one of the initial terms of the members of the  
7 crematory authority council appointed under section 15.407 (8) (b) of the statutes,  
8 as created by this act, shall expire on July 1, 2006; one of the initial terms of the  
9 members of the crematory authority council appointed under section 15.407 (8) (a)  
10 of the statutes, as created by this act, one of the initial terms of the members of the  
11 crematory authority council appointed under section 15.407 (8) (b) of the statutes,  
12 as created by this act, and the initial term of the public member shall expire on July  
13 1, 2007; and the other 2 initial terms of the members of the crematory authority  
14 council shall expire on July 1, 2008.

15 **SECTION 5. Effective date.**

16 (1) This act takes effect on the first day of the 7th month beginning after  
17 publication.

18 (END)

1

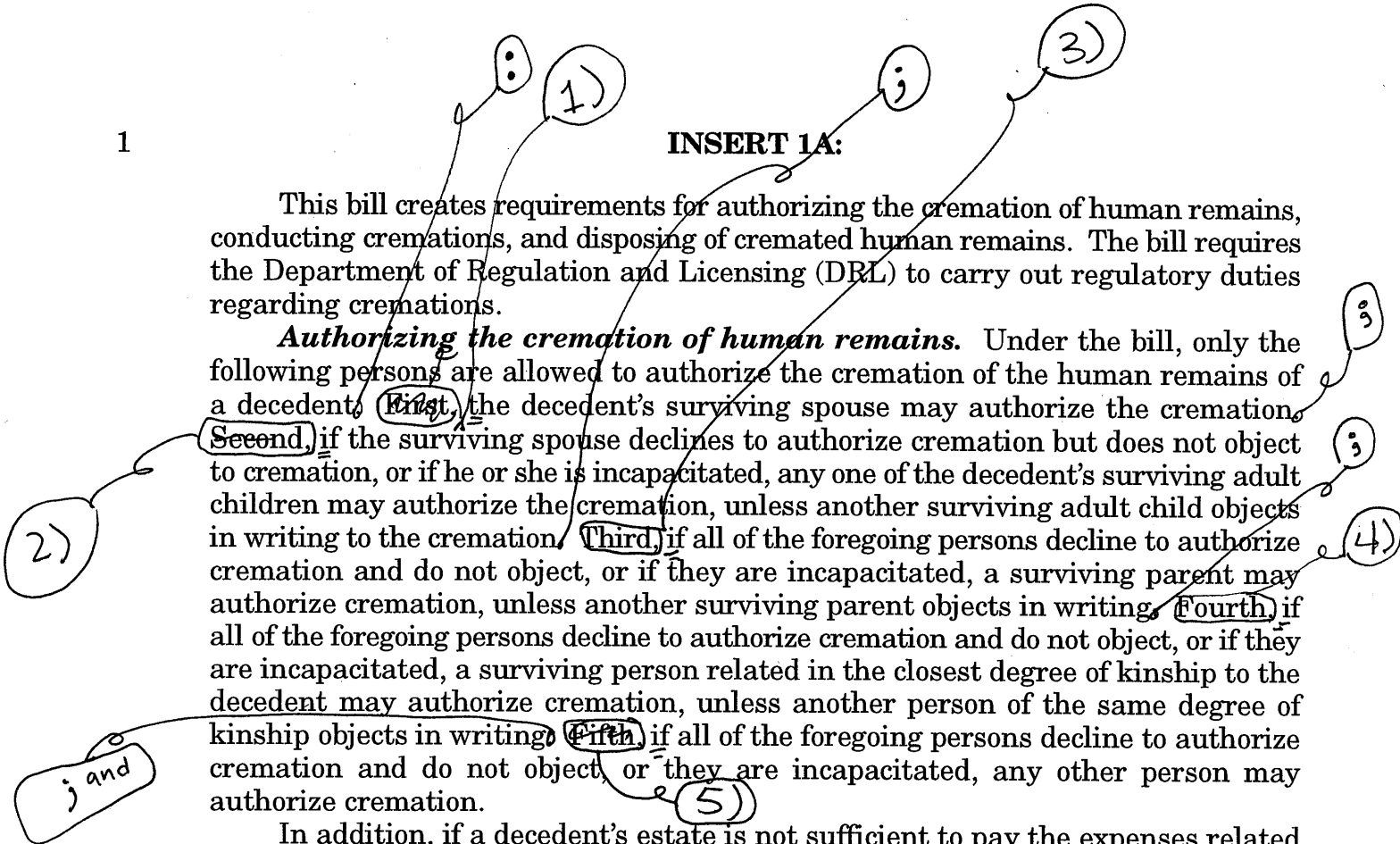
INSERT 1A:

This bill creates requirements for authorizing the cremation of human remains, conducting cremations, and disposing of cremated human remains. The bill requires the Department of Regulation and Licensing (DRL) to carry out regulatory duties regarding cremations.

*Authorizing the cremation of human remains.* Under the bill, only the following persons are allowed to authorize the cremation of the human remains of a decedent: First, the decedent's surviving spouse may authorize the cremation. Second, if the surviving spouse declines to authorize cremation but does not object to cremation, or if he or she is incapacitated, any one of the decedent's surviving adult children may authorize the cremation, unless another surviving adult child objects in writing to the cremation. Third, if all of the foregoing persons decline to authorize cremation and do not object, or if they are incapacitated, a surviving parent may authorize cremation, unless another surviving parent objects in writing. Fourth, if all of the foregoing persons decline to authorize cremation and do not object, or if they are incapacitated, a surviving person related in the closest degree of kinship to the decedent may authorize cremation, unless another person of the same degree of kinship objects in writing. Fifth, if all of the foregoing persons decline to authorize cremation and do not object, or they are incapacitated, any other person may authorize cremation.

In addition, if a decedent's estate is not sufficient to pay the expenses related to the final disposition of the decedent's human remains, or if final disposition is the responsibility of the state or a local unit of government, the bill allows the following to authorize cremation: 1) the coroner or medical examiner of the county in which the death occurred; or 2) the decedent's guardian at the time of death. However, a coroner, medical examiner, or guardian may not authorize cremation if any person in the first four categories described above objects in writing or states in writing that cremation was contrary to the decedent's religious beliefs. Also, a coroner, medical examiner, or guardian may not authorize cremation if a person that owns or operates a crematory, which the bill defines as a "crematory authority", determines that there is other evidence that cremation was contrary to the decedent's religious beliefs.

A person who is allowed to authorize the cremation of human remains, whom the bill defines as an "authorizing agent", may exercise that authority only by completing an authorization form. The form must state that the authorizing agent has no reason to believe that the decedent's remains contain any device that may be hazardous or cause certain damage during the cremation. The form must also identify the funeral director, funeral establishment, or cemetery that the authorizing agent authorizes to receive the cremated remains. If alternative arrangements are made for receiving the cremated remains, the form must describe the arrangements. In addition, the form must contain other information, including the following: 1) if known by the authorizing agent, the manner in which the cremated remains are to be disposed; 2) an itemized list of any valuables on the decedent's person that must



be removed prior to cremation and returned to the authorizing agent; and 3) if a viewing or other services are planned, the date and time of the viewing or services.

The bill allows an authorizing agent to delegate, in writing, the authority to authorize cremation to another individual. In addition, the bill allows an authorizing agent to cancel a cremation by providing the crematory authority with a written revocation of an authorization form and with written instructions regarding the final disposition of the human remains. Also, the bill provides that an authorizing agent is liable for any damages resulting from authorizing a cremation.

**Conducting cremations.** The bill allows only persons who are registered with DRL as "cremation authorities" to cremate human remains. DRL must register a person who pays a fee, and provides specified information, including a description of the structure and equipment proposed to be used in operating a "crematory" which the bill defines as a building or portion of a building within which a cremation chamber is located. A registration must be renewed every 2 years. *two*

The bill requires a crematory authority that accepts human remains from a person to provide the person with a receipt. The bill allows a crematory authority to refuse acceptance for any of the following reasons: 1) the container has evidence of leakage of bodily fluids; 2) the crematory authority has knowledge of an unresolved dispute regarding the cremation of the human remains; 3) the crematory authority has reason to believe that a representation of the authorizing agent is not true; or 4) the crematory authority has reason to believe that the human remains contain a device that may be hazardous or cause certain damage during a cremation. In addition, the bill prohibits a crematory authority from refusing acceptance solely on the basis that the human remains have not been placed in a casket or have not been embalmed. ✓

The bill prohibits a crematory authority from cremating human remains, unless it has received the authorization form described above, as well as a copy of a cremation permit and a report for final disposition of a human corpse that are required under current law. In addition, the crematory authority must satisfy other requirements, including requirements regarding holding human remains before cremation, removing cremated remains from a cremation chamber, using containers for cremated remains, and maintaining a system for identifying human remains throughout the cremation process. The bill also imposes requirements on a crematory authority's delivery of cremated remains to another person.

In addition, the bill does the following: 1) requires crematory authorities to maintain permanent records regarding cremations; 2) prohibits crematory authorities from selling material or devices (such as medical devices) obtained from cremating human remains; and 3) prohibits crematory authorities from reselling containers used for cremating human remains. The bill also provides that crematory authorities are immune from civil liability for damages resulting from cremating human remains if they comply with the bill's requirements. However, the immunity does not apply to intentional misconduct, negligent conduct, or the failure to return valuables specified on an authorization form.

**Disposing of cremated remains.** The bill provides that an authorizing agent is responsible for determining the manner in which cremated remains are disposed. ✓

However, if the authorizing agent does not make the determination, the crematory authority must, no sooner than 30 days after the cremation, deliver the cremated remains to the person, funeral establishment, or other business entity that delivered the human remains to the crematory authority for cremation. Such a person, funeral establishment, or business entity may not refuse to accept the cremated remains. No sooner than 60 days after receiving the cremated remains, the person, funeral establishment, or business entity is allowed to determine the manner of disposal and must make a written record of the determination. An authorizing agent, the decedent's estate, or both, are liable for any reasonable expenses for delivering to, and disposal of cremated remains by, such a person, funeral establishment, or business entity. *delivery*

Under the bill, cremated remains may be disposed of only in one of the following manners: 1) placement in a grave, niche, or crypt, or 2) any other lawful manner, but only if the cremated remains are reduced to particle size of one-eighth inch or less. Also, unless the prior written consent of the appropriate authorizing agents is obtained, cremated remains of different individuals may not be commingled or placed in the same container. *provisions B E*

Other requirements. The bill creates other requirements, including the following: *include*

1. The bill allows DRL to take disciplinary action, including revoking a registration, if a crematory authority violates the bill's requirements.

2. The bill creates criminal penalties and civil forfeitures for violating the bill's requirements.

3. The bill allows a person to act as authorizing agent for cremating a part of his or her body, or to authorize another person to act as authorizing agent for such a purpose. *incapacitated*

4. The bill specifies the circumstances under which a person is considered incompetent for purposes of determining who may act as an authorizing agent. *three*

5. The bill creates a Crematory Authority Council to advise DRL on the regulation of crematory authorities. The council consists of 3 funeral directors, 3 representatives of cemetery authorities, and one public member. *three*

Finally, the bill does not affect any of the following provisions under current law regarding cremations: 1) the requirement to obtain a permit from a coroner or medical examiner before cremating a corpse; 2) the authority of the Department of Health and Family Services to make orders regarding the disposal of human remains during public health emergencies declared by the governor; and 3) the authority of the Department of Commerce to approve the construction of crematoriums. *law*

**INSERT 2-7:**

**SECTION 1.** 157.055 (2) (intro.) of the statutes is amended to read:

157.055 (2) (intro.) Notwithstanding ss. 69.18 (4), 445.04 (2), 445.14, 979.01 (3), (3m), and (4), 979.02, and 979.10, and subch. VI of ch. 440, during a period of a state

1  
2  
3  
4



- 1 of emergency related to public health declared by the governor under s. 166.03 (1) (b)
- 2 1., a public health authority may do all of the following:

**History:** 2001 a. 109.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1054/1dn

MDK:.....

cjs

Christopher Klein:

This version is identical to the previous version, except for the change to the liability exemption that you requested and except for the inclusion of an analysis. Also, unlike the previous version, this version amends s. 157.055 (2) (intro.) to provide that DHFS may issue orders that supercede the bill's requirements during public health emergencies declared by the governor. ✓

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: [mark.kunkel@legis.state.wi.us](mailto:mark.kunkel@legis.state.wi.us)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1054/1dn  
MDK:cjs:ch

September 15, 2003

Christopher Klein:

This version is identical to the previous version, except for the change to the liability exemption that you requested and except for the inclusion of an analysis. Also, unlike the previous version, this version amends s. 157.055 (2) (intro.) to provide that DHFS may issue orders that supercede the bill's requirements during public health emergencies declared by the governor.

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: [mark.kunkel@legis.state.wi.us](mailto:mark.kunkel@legis.state.wi.us)

## Barman, Mike

---

**From:** Kunkel, Mark  
**Sent:** Monday, September 22, 2003 11:40 AM  
**To:** Halbur, Jennifer  
**Cc:** Barman, Mike  
**Subject:** Cremation draft (Jacket request)



03-1054/1

PS to Mike: Can you please jacket the above bill and send it to Sen. Roessler's office? The Dept. of Regulation and Licensing gave us permission to release the bill to Sen. Roessler. Thanks.

---

Mark D. Kunkel  
Senior Legislative Attorney  
Legislative Reference Bureau  
(608) 266-0131