



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Added To File: 12/12/2002 (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.

☞ The attached 2001 draft was incorporated into the new 2003 draft listed above. For research purposes, this cover sheet and the complete drafting file were 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.

**2001 DRAFTING REQUEST**

**Bill**

Received: **01/22/2001**

Received By: **kunkemd**

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: **kunkemd**

May Contact:

Addl. Drafters: **grantpr**

Subject: **Occupational Reg. - prof lic  
Cemetery - regulation**

Extra Copies:

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:**

Cremation of human remains (funeral directors examining board request)

**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 10/18/2001	csicilia 10/18/2001	rschluet 10/18/2001	_____	lrb_docadmin 10/18/2001		State
/P2	grantpr 02/27/2002	csicilia 02/28/2002	rschluet 03/01/2002	_____	lrb_docadmin 03/01/2002		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P3	grantpr 03/12/2002	csicilia 03/13/2002	kfollet 03/14/2002		lrb_docadmin 03/14/2002		State
/P4	grantpr 03/15/2002	csicilia 03/18/2002	jfroutz 03/18/2002		lrb_docadmin 03/18/2002		State

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				_____	03/01/2002		
/P3	grantpr	csicilia	kfollet	_____	lrb_docadmin		State
	03/12/2002	03/13/2002	03/14/2002	_____	03/14/2002		

FE Sent For:

14 qs 3/18  
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Extra Copies:

*Emailed 10/18/01*

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02*

*4 28-2 PG  
<END>*



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10/18/01

FE Sent For:

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**Kunkel, Mark**

-2804

**From:** Shelton, Myra  
**Sent:** Monday, January 22, 2001 5:30 PM  
**To:** Kunkel, Mark  
**Cc:** Cummings, Marlene; Hansen, Clete; Rothstein, Jacquelynn-DRL  
**Subject:** Request for Legislation -Funeral Directors Examining Board

Mark, attached is the bill drafting request from the Funeral Directors Examining Board relating to cremations. If you have any questions about this legislation request please contact Clete Hansen directly at 6-5439. Hope all is going well with you. Enjoy your week. Myra



Fun Dirs-Request for  
Legislati...



Fun Dirs-Cremation  
Legislation...

*Have A Great Day-Smile!*  
*Myra*

## Request for Legislation

**Date:** January 19, 2001

**Person or Body requesting draft:** Funeral Directors Examining Board/Clete Hansen  
**Name, address and telephone** Dan Densow  
**number of board member to** 5 Brentwood Lane  
**contact if there are questions** Appleton, WI 54915  
**about the proposal.** (920) 739-1231; E-mail: [Ddensow88@aol.com](mailto:Ddensow88@aol.com)

**Describe the problem to be corrected by the legislation.**

This legislative is proactive. There is currently no regulation of crematory services, nevertheless the number of cremations in Wisconsin is increasing each year. There is a significant potential for abuses, relating to the handling and disposition of cremains.

**How should the problem be corrected?**

Legislation is needed that adequately protects consumers, without over-regulating those who provide cremation services. In addition, legislation is needed that would maintain a level playing field between funeral directors, cemeteries and other who provide cremation services.

**Has this proposal been introduced as legislation before? If so, when and under what bill number?**

No.

**What is the likely fiscal effect of the proposal?**

The proposal would require cemetery authorities to register with the Department of Regulation or the Funeral Directors Examining Board. At the time this proposal could be passed into law as many as 100 cremation cemetery authorities might be required to register. Thus, the department would need minor staffing increases for original and renewal registrations. The board and the department will have disciplinary authority; thus, there will be a need for screening, investigation and prosecution of complaints. There will also be some minor postage and printing costs for application forms, statutes and rules books, registration certificates and newsletters. A preliminary estimate would be that the department would receive \$4,500 in registration fees and expend that amount for regulating cemetery authorities.

**Attach copies of any correspondence or other material that may assist in the drafting of the legislation.**

The final draft of the Funeral Directors Examining Board is attached.  
**I:\Fun Dirs-Request for Legislation.doc**

# Proposed Cremation Regulations for the State of Wisconsin

## **Section 1. Definitions** In this subchapter:

(1) "Alternative Container" means a receptacle, other than a casket, in which human remains are transported to the crematory and placed in the cremation chamber for cremation. An alternative container shall be composed of readily combustible materials suitable for cremation, able to be closed in order to provide a complete covering for the human remains, resistant to leakage or spillage, rigid enough for handling with ease, and able to provide protection for the health, safety, and personal integrity of crematory personnel.

(2) "Authorizing agent" means a person legally entitled to order the cremation and final disposition of human remains.

(3) "Board" means the funeral directors examining board.

(4) "Body parts" means limbs or other portions of the anatomy that are removed from a person for medical purposes during treatment, surgery, biopsy, autopsy, or medical research; or human bodies or any portion of bodies that have been donated to science for medical research purposes.

(5) "Casket" means a rigid container that is designed for the encasement of human remains, is constructed of wood, metal, or like material and ornamented or lined with fabric, and may or may not be combustible.

*→ But must cremate, unless consent otherwise?*

(6) "Cremated remains" means all human remains recovered after the completion of the cremation of a human body or human body part, including the residue of any foreign materials, nonmetallic casket material, dental work, or eyeglasses that were cremated with the human remains but excluding any prosthetic or medical device.

(7) "Cremation" means the technical process, using heat and flame, that reduces human remains to bone fragments and may include the processing or the pulverization of bone fragments.

(8) "Cremation chamber" means the enclosed space within which a cremation takes place.

(9) "Cremation room" means the room where the cremation chamber is located.

(10) "Crematory" means the building or portion of a building that houses the cremation room and the holding facility.

(11) "Crematory authority" means the legal entity or the authorized representative of the legal entity that is registered by the department to operate a crematory and to perform cremations.

(12) "Department" means the department of regulation and licensing.

(13) "Final disposition" means the burial, cremation, or other disposition of a dead human body or parts of a dead human body.

(14) "Holding facility" means an area that is designated for the retention of human remains prior to cremation, complies with all applicable public health law, preserves the health and safety of the crematory authority personnel, and is secure from access by anyone other than authorized persons. A holding facility may be located in a cremation room.

(15) "Human remains" means the body or a part of the body of a deceased individual.

(16) "Niche" means a space in a columbarium that is used or intended to be used for the interment of cremated human remains of one (1) or more deceased individuals.

(17) "Processing" means the reduction of identifiable bone fragments after the completion of the cremation process to unidentifiable bone fragments by manual or mechanical means.

(18) "Scattering area" means a designated area for the scattering of cremated human remains.

(19) "Temporary container" means a receptacle for cremated remains, usually composed of cardboard, plastic or similar material, that can be closed in a manner that prevents the leakage or spillage of the cremated remains or the entrance of foreign materials, and is a single container of sufficient size to hold the cremated remains until an urn is acquired or the cremated remains are scattered.

(20) "Urn" means a receptacle designed to encase cremated remains.

## Section 2 Crematory registration

*d-NOTE* (1) A crematory authority shall obtain all necessary permits from appropriate local, state or federal agencies.

*d-NOTE* (2) A crematory authority may be constructed on or adjacent to a cemetery, a funeral establishment, or another location if allowed by local zoning ordinances.

(3) An application for registration as a crematory authority shall be in writing on forms provided by the department or board. Applications shall be accompanied by the appropriate fee and shall contain the following:

- (a) The full name and address of the applicant or the business entity the applicant represents;
- (b) The address and location of the crematory;
- (c) A description of the type of structure and equipment to be used in the operation of the crematory; and
- (d) Any further information that the department or board may reasonably require.

(4) If an applicant is a licensed funeral director or holds a permit for a funeral establishment, application shall be made to the board. All other applicants shall submit applications to the department.

(5) Renewal applications shall be submitted on or before the applicable renewal date specified under s. 440.08 (2) (a) and shall include the applicable renewal fee specified under 440.08 (2) (a).

### **Section 3 Authorizing agent**

The following persons, in the priority listed, may serve as an authorizing agent:

- (1) The decedent's spouse at the time of the decedent's death.
- (2) The decedent's surviving adult children. If more than one (1) adult child is surviving, any adult child who confirms in writing that the other adult children have been notified, unless the crematory authority receives a written objection to the cremation from another adult child.
- (3) The decedent's surviving parent. If both parents survive the decedent, either parent may serve as the authorizing agent unless the crematory authority receives a written objection to the cremation from the other parent.
- (4) The individual in the next degree of kinship as provided in Chapt. 852, Wis. Stats. If more than one (1) individual of the same degree is surviving, any person of that degree may serve as the authorizing agent unless the crematory authority receives a written objection to the cremation from one (1) or more persons of the same degree.
- (5) In the case of an indigent or other individual whose final disposition is the responsibility of the state, the following may serve as the authorizing agent:
  - (a) Any person identified in subd. (1) through (4)
  - (b) The coroner or medical examiner
  - (c) A state appointed guardian. However, an indigent decedent may not be cremated if a surviving family member objects to the cremation or if the cremation would be contrary

to the religious practices of the deceased individual as expressed by the individual or the individual's family.

(6) In the absence of any person under subd. (1) through (5) any person willing to assume the responsibility as the authorizing agent, as specified in this article.

(7) A living individual may act as the authorizing agent for the cremation of his or her own body part. A living individual may also direct another representative to serve as the authorizing agent for his or her own body part.

#### Section 4 Cremation authorization form

→ rules? by ex 6d & DRL

A cremation authorization form shall contain the following:

- (1) The name of the decedent and the decedent's time of death
- (2) The name of the authorizing agent and the relationship of the agent to the decedent.
- (3) A statement that the authorizing agent has the authority to authorize the cremation and that no other person has a superior priority right. Alternatively, a statement that the authorizing agent has made all reasonable efforts to contact the person with a superior right and does not believe he or she would object to the cremation.
- (4) A statement that the decedent's remains do not contain a pacemaker or any other material or implant or radiation producing device that may be potentially hazardous or cause damage to the cremation chamber or the individual performing the cremation. *grounds for refusal*
- (5) The name of the funeral director or funeral home authorized to receive the cremated remains from the crematory authority or, if the crematory is on cemetery property, the cemetery authorized to receive the cremated remains  
*\*\*\* anywhere else?*
- (6) The manner in which disposition of the cremated remains is to take place, if known.
- (7) An itemized list of any valuables on the decedent's person that shall be removed and returned to the authorization agent prior to the decedent's cremation. *add to duty*
- (8) A statement prohibiting the crematory from selling nonorganic material recovered from the human remains. *add to duty*
- (10) A statement that the decedent's cremation shall not occur until after the date on which any viewings or services are to be held. If a viewing or service is planned, the date and time of the viewing or service shall be identified. *add to duty*
- (11) The signature of the authorizing agent attesting to the accuracy of all representations contained on the cremation authorization form. */*

#### Section 5 Authorization for cremation

A crematory authority shall not cremate a decedent until it has received the following:

- (1) A completed cremation authorization form.
- (2) A completed Report of Final Disposition of a Human Corpse.
- (3) A copy of the completed death certificate.



- (4) A completed cremation permit as authorized by s. 979.10.

### Section 6 Written delegation of authority

- (1) An authorizing agent may delegate his or her authority to another person. Said delegation shall be in writing and may be transmitted by facsimile transmission, telegram, or other means of electronic transmission.
- (2) A written statement of delegation shall include all of the following:
- (a) The name, address and relationship of the authorizing agent to the decedent.
  - (b) The name, address, and relationship of the person to whom authority is delegated.

### Section 7 Authorizing agent; liability

(1) Any person signing a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth in the cremation authorization form, including the identity of the decedent whose remains are sought to be cremated and that person's authority to order such cremation.

→ NOT NECESSARY?

(2) An authorizing agent who signs a cremation authorization form is ~~personally~~ liable for damages resulting from authorizing the cremation.

(3) The authorizing agent is responsible for the disposition of a decedent's cremated remains. The crematory authority may hold the cremated remains for a thirty (30) day period.

→ NOT NECESSARY?  
because redundant

### Section 8 Revocation of authorization

At any time prior to cremation, an authorizing agent may cancel a cremation. Upon cancellation, the authorizing agent shall notify the crematory in writing as to where the deceased's remains should be taken. The crematory shall then release the deceased per the authorizing agent's instructions.

### Section 9 Receipt for delivery of human remains to the crematory authority

- (1) Any person who delivers human remains to a crematory authority shall receive a written receipt.
- (2) The receipt shall contain the following:
- (a) Name of the decedent.
  - (b) Date and time the human remains were delivered.
  - (c) The type of casket or container in which the human remains were delivered.
  - (d) The name of the person delivering the human remains and the name of the funeral home or other entity with whom the person is affiliated, if any.
  - (e) Signature of the person who delivered the human remains.
  - (f) Signature of the person who received the human remains on behalf of the crematory.

(3) The crematory authority shall retain a copy of each receipt in its permanent records.

**Section 10 Receipt furnished upon delivery of cremated remains**

(1) Any person who received cremated remains from a crematory authority shall receive a written receipt.

(2) The receipt shall contain the following:

(a) Name of the decedent.

(b) Date and time the cremated remains were released.

(c) The name and signature of the person receiving the cremated remains and the name of the funeral home or other entity with whom the person is affiliated, if any.

(e) Name and signature of the person who released the cremated remains on behalf of the crematory.

(3) The crematory authority shall retain a copy of each receipt in its permanent records.

**Section 11 Permanent records of cremated remains at cremation facility**

(1) A crematory authority shall maintain a permanent record of each cremation at its place of business. The record shall contain the name of the decedent and the date of the cremation.

(2) The crematory authority shall maintain a record of the manner in which cremated remains are disposed.

**Section 12 Record of cremated remains maintained by cemetery or other entity**

Cemeteries and burial sites shall maintain records for any cremated remains received for interment, entombment, or scattering.

**Section 13 Acceptance of cremated remains**

(1) A crematory authority shall not require that human remains be placed in a casket before cremation or that human remains be cremated in a casket.

(2) A crematory authority shall not refuse to accept human remains for cremation because the human remains are not embalmed.

(3) The crematory may refuse to accept a casket or an alternative container if there is evidence of the leakage of body fluids.

*du 157?  
157.62*

*sep. prohibit-?*

**Section 14 Holding facility** ✓

Whenever a crematory authority is unable or unauthorized to cremate human remains, the crematory authority shall immediately place the human remains in a holding facility.

**Section 15 Disposal of container** ✓

Caskets and alternative containers containing human remains shall be cremated with the human remains or destroyed unless the crematory authority notifies the authorizing agent otherwise on the cremation authorization form and obtains the written consent of the authorizing agent.

**Section 16 Simultaneous cremation** ✓

(1) The simultaneous cremation of the human remains of more than one person within the same cremation chamber, without the prior written consent of the authorizing agent, is prohibited.

2

(2) Subd. (1) does not prevent the simultaneous cremation within the same cremation chamber of body parts delivered to the crematory authority from multiple sources  or the use of cremation equipment that contains more than one (1) cremation chamber. ]

NOT relevant

**Section 17 Residue removal** ✓

Upon completion of each cremation, and insofar as is practical, all of the recoverable residue of the cremation process shall be removed from the cremation chamber.

**Section 18 Excess remains; additional container** ✓

If all of the recovered cremated remains do not fit within the receptacle that has been selected, the remainder of the cremated remains shall be returned to the authorizing agent or the agent's designee in a separate container.

**Section 19 Identification of cremated remains for shipping**

what is this?

Cremated remains may only be shipped by an entity that uses an internal tracing system and obtains a signed receipt from the person accepting delivery.

internal tracing system

**Section 20 Crematory identification system** ✓

- the shipping duty applies to whom?

A crematory authority shall maintain an identification system that ensures the identity of the human remains throughout all phases of the cremation process.

tracking delivery of the shipment

## Section 21 Disposition of cremated remains

- (1) Authorizing agents shall be responsible for determining the disposition of the cremated remains.
- (2) Cremated remains may be retained by anyone having legal control over them or may be disposed of in any of the following ways:
  - (a) Placing the remains in a grave, niche or crypt;
  - (b) Scattering the remains in a scattering area; or
  - (c) Disposing of the remains in any manner as long as the remains are reduced to a particle size of one-eighth (1/8) inch or less and the disposal does not contravene any statute or ordinance.

(3) Cremated remains may be returned to the funeral home of record thirty days after the date of cremation, if no other arrangements for the cremated remains have been made. Any such deliveries shall be made in person or by registered mail.

who is this?

(4) A funeral director may retain any cremated remains returned by a crematory authority for sixty (60) days following the date of cremation. At the end of sixty (60) days, the funeral home of record may dispose of the cremated remains in any lawful manner. The authorizing agent [*decedent's estate*] shall be responsible for all reasonable expenses incurred in disposing of the cremated remains pursuant to this section. A record of such disposition shall be made and kept by the person making such disposition.

## Section 22 Commingling cremated remains

Without written permission from an authorizing agent, a person shall not:

- (1) Dispose of cremated remains in a manner or location that commingles the cremated remains with the cremated remains of another individual. This prohibition does not apply to the scattering of cremated remains on the land, sea or air.
- (2) Place the cremated remains of more than one individual in the same temporary container or urn.

## Section 23 Crematory authority not liable for damages from cremation when performed as authorized in accordance with this chapter

A crematory authority that has received an executed cremation authorization form and any other required documentation under this subchapter shall not be liable for damages if the cremation is performed in accordance with those documents and any other requirements of this chapter.

- immune from civil liability

## Section 24 Crematory authority not liable for damages of an unsettled dispute

- (1) A crematory authority is not required to accept human remains for cremation if any of the following apply:

- (a) The crematory authority is aware of a dispute concerning the cremation of the human remains;
  - (b) The crematory authority has reason to believe that the representations of the authorizing agent are untrue; or
  - (c) The crematory authority has a lawful reason for its refusal.
- (2) The crematory authority shall accept human remains for cremation upon receipt of a court order or other ~~reasonable~~ documentation that any outstanding disputes have been resolved.

**Section 25 Dispute of release**

If a crematory authority is aware of a dispute concerning the release or disposition of cremated remains, the crematory authority may release the remains to the funeral home of record until the dispute has been resolved. *who?*

**Section 26 Devices and/or valuables**

Except as provided in sec. 4, a crematory authority shall not be held liable for any damage to prosthetic devices or other valuables of the deceased. A crematory authority shall not resell caskets or prosthetic or medical devices obtained as a result of cremation or from cremated remains. Any prosthetic or medical devices shall be disposed of in a lawful manner, including being returned to the funeral director of record. *-add duty*

**Section 27 Disciplinary proceedings and actions** *why recy?*

- (1) Subject to the rules promulgated under s. 440.03 (1), the department or board may make investigations or conduct hearings to determine whether a violation of this chapter or any rule promulgated under this chapter has occurred.
- (2) Subject to the rules promulgated under s. 440.03 (1), the department or board may reprimand a registrant or deny, limit, suspend, or revoke a registration under this chapter if it finds that the applicant or registrant has done any of the following:
  - (a) Made a material misstatement in an application for a registration or renewal of a registration.
  - (b) Engaged in conduct while practicing as a crematory operator that evidences a lack of knowledge or ability to apply professional principles or skills.
  - (c) Subject to ss. 111.321, 111.322 and 111.335, been arrested or convicted of an offense committed while registered under this chapter.
  - (d) Advertised in a manner that is false, deceptive or misleading.
  - (e) Advertised, practiced or attempted to practice as a crematory operator under another person's name.
  - (f) Violated this chapter or any rule promulgated under this chapter.

## **Section 28 Penalties**

(1) Any person who violates this chapter or any rule promulgated under this chapter may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

(2) In addition to or in lieu of the penalties under sub. (1) and the remedies under s. [27], any person who violates this chapter or any rule promulgated under this chapter may be required to forfeit not more than \$1,000 for each separate offense. Each day of continued violation constitutes a separate offense.

I:\Fun Dirs-Cremation Legislation.doc

Registrar, renewal

Probabilis exempt - s  
- auth agent  
- crem. auth  
(if seal devices valuable)

Discipline

- what if non reg'd person violates

Requirements for cremation -

- Need proper paperwork

- auth form

auth agent, or delegat - by auth agent

- Rpt on FD of HC

- death certif

- 979.10 permit

Case: revoking auth

1 Acceptance of HRs:

Receipts:

- CA gives person who delivers a receipt

- person who delivers to CA gives CA a receipt

- Accepting HRs: when it can refuse, when it can't refuse  
- Holding facilities: when CA must use

2 Cremation - it self

- disposal of container

- excess RMs

ingeneral:

- simultaneous

- shipping the RMs

3 - ID 545 for CA

- residue RMs

Records of CA

- each cremation -

Case: ch 157

duty on Crem. Auth, etc to retain records

Disposition of RMs

- How

- return to fun home (if what does funeral home do)

- commingling

- 2804

**Kunkel, Mark**

---

**From:** Ashley Moore  
**Sent:** Monday, October 15, 2001 9:52 AM  
**To:** Kunkel, Mark  
**Subject:** Fw: Fw: another question

Mark-

These are Dan's responses to your questions.

Let me know if you need anything else.

Thanks!

Ashley Moore

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

**From:** [DDensow88@aol.com](mailto:DDensow88@aol.com)

**To:** [amoore@patrickessie.com](mailto:amoore@patrickessie.com)

**Sent:** Monday, October 15, 2001 9:25 AM

**Subject:** Re: Fw: another question

Ashley,

I believe I have all the answers to the drafter's questions.

1. Who will regulate these rules?

The drafter is correct in his 3rd e-mail. The Board would regulate the funeral homes that operate crematories. The DRL would regulate cemeteries that operate crematories.

2. Funeral home of record?

This would be the funeral home that is serving the family at the time of need no matter if the cremation takes place at a funeral home that operates a crematory or if it takes place at a crematory that is operated by a cemetery.

3. If a crematory is not registered?

It is the intent that a crematory cannot operate unless they are registered.

E-mail me at any time with further questions Ashley. Thanks for all your help!

Dan





State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-2804/P1

MDK:.....

D-NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Today?

INSERT

ejs

per cat

1 AN ACT...; relating to: regulating the cremation of human remains, granting  
2 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.

For further information see the *state* 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:*

3 SECTION 1. 15.405 (16) of the statutes is amended to read:  
4 15.405 (16) FUNERAL DIRECTORS EXAMINING BOARD. There is created a funeral  
5 directors examining board in the department of regulation and licensing. The  
6 funeral directors examining board shall consist of 6 members appointed for  
7 staggered 4-year terms. Four members shall be licensed funeral directors under  
8 subch. II of ch. 445 in this state. Two members shall be public members.

History: 1973 c. 90, 156; 1975 c. 39, 86, 199, 200, 383, 422; 1977 c. 26, 29, 203; 1977 c. 418; 1979 c. 34 ss. 45, 47 to 52; 1979 c. 221, 304; 1981 c. 94 ss. 5, 9; 1981 c. 356; 1983 a. 27, 403, 485, 538; 1985 a. 340; 1987 a. 257 s. 2; 1987 a. 264, 265, 316; 1989 a. 316, 340; 1991 a. 39, 78, 160, 189, 269; 1993 a. 16, 102, 463, 465, 491; 1995 a. 27 s. 9126 (19); 1995 a. 225; 1995 a. 305 s. 1; 1995 a. 321, 417; 1997 a. 96, 252, 300.

1           **SECTION 2.** 49.47 (4) (i) 1. of the statutes is amended to read:

2           49.47 (4) (i) 1. The department shall request a waiver from the secretary of the  
3 federal department of health and human services to permit the application of subd.  
4 2. The waiver shall request approval to implement the waiver on a statewide basis,  
5 unless the department of health and family services determines that statewide  
6 implementation of the waiver would present an obstacle to the approval of the waiver  
7 by the secretary of the federal department of health and human services, in which  
8 case the waiver shall request approval to implement the waiver in 48 pilot counties  
9 to be selected by the department of health and family services. Within 30 days after  
10 August 12, 1993, the department of regulation and licensing shall notify funeral  
11 directors licensed under subch. II of ch. 445, cemetery associations, as defined in s.  
12 157.061 (1r), and cemetery authorities, as defined in s. 157.061 (2), of the terms of  
13 the waiver required to be requested under this subdivision. If the waiver is approved  
14 by the secretary of the federal department of health and human services and if the  
15 waiver remains in effect, subd. 2. shall apply.

History: 1971 c. 125; 1971 c. 213 s. 5; 1971 c. 215; 1973 c. 90, 147, 333; 1977 c. 29 ss. 593, 1656 (18); 1977 c. 105 s. 59; 1977 c. 273, 418; 1979 c. 34; 1981 c. 20, 93; 1981 c. 314 s. 144; 1983 a. 27, 245; 1985 a. 29; 1987 a. 27, 307, 399, 413; 1989 a. 9; 1989 a. 31 ss. 1462k to 1466d, 2909c to 2909i; 1989 a. 173, 336, 351; 1991 a. 39, 178, 269, 316; 1993 a. 16, 269, 277, 437; 1995 a. 27 ss. 3026 to 3028, 9126 (19); 1995 a. 225, 289, 295; 1997 a. 27; 1999 a. 9.

16           **SECTION 3.** 69.18 (1) (a) 1. of the statutes is amended to read:

17           69.18 (1) (a) 1. A funeral director licensed under subch. II of ch. 445 acting in  
18 person or through the agency of another funeral director licensed under subch. II of  
19 ch. 445.

History: 1985 a. 315; 1985 a. 332 s. 253; 1989 a. 307; 1993 a. 386; 1995 a. 357; 1997 a. 114.

20           **SECTION 4.** 157.06 (8) (c) of the statutes is amended to read:

21           157.06 (8) (c) If there has been an anatomical gift, a physician may remove any  
22 donated parts of the body, a technician may remove any donated tissue or bone and  
23 an enucleator may remove any donated eyes or parts of eyes, after determination of

INSERT 2-20

1 death by a physician. Any individual acting under the direction of a physician and  
2 any funeral director licensed under subch. II of ch. 445 may perform the functions  
3 of an enucleator under this section if he or she has completed a course in eye  
4 enucleation and holds a valid certification of competence from a medical college  
5 approved by the medical examining board under s. 448.05 (2). A certificate of  
6 competence shall be valid for 3 years.

History: 1971 c. 40 s. 93; 1971 c. 213 s. 5; 1977 c. 46, 124; 1979 c. 175 s. 33; 1979 c. 221 s. 2202 (45); 1981 c. 20, 290; 1983 a. 485; 1985 a. 286, 315; 1985 a. 316 s. 14; Stats. 1985 s. 157.06; 1989 a. 105; 1989 a. 298 ss. 3, 10m, 11m; 1991 a. 32; 1995 a. 27 s. 9126 (19); 1997 a. 52, 206, 305; 1999 a. 83.

7 **SECTION 5.** 157.62 (3) (b) 1m. of the statutes is created to read:

8 157.62 (3) (b) 1m. Records that identify the cremated human remains that are  
9 disposed of at the cemetery, including the name of the decedent, the date of  
10 disposition, and the manner in which the cremated human remains are disposed.

\*\*\*\*NOTE: The instructions require maintaining records for cremated human remains that are received for interment, entombment, or scattering. Isn't it preferable to refer to any disposition and require a description of the manner of disposition?

11 **SECTION 6.** 157.62 (4) of the statutes is amended to read:

12 157.62 (4) RECORDS MAINTENANCE. The records under sub. (3) (b) 1. and 1m.  
13 shall be permanently maintained by the cemetery authority or licensee. Each record  
14 under sub. (3) (b) 2. shall be maintained for not less than 3 years after the date of the  
15 deposit. Each copy of a contract under sub. (3) (b) 3. shall be maintained for not less  
16 than 3 years after all of the obligations of the contract have been fulfilled. The  
17 department may promulgate rules to establish longer time periods for maintaining  
18 records under sub. (3) (b) 2. and 3.

History: 1989 a. 307; 1991 a. 16, 32, 269; 1995 a. 27; 1997 a. 79.

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

20 440.08 (2) (a) 24m. Crematory authority: January 1 or each even-numbered  
21 year; \$53.

\*\*\*\*NOTE: \$53 is the standard renewal fee for all credentials created this biennium. The renewal date is the same as the renewal date for funeral directors. Is that okay?

1 SECTION 8. 440.947 (1) (d) of the statutes is amended to read:

2 440.947 (1) (d) "Person" does not include a person issued a funeral director's  
3 license under subch. II of ch. 445 or an operator of a funeral establishment, as defined  
4 in s. 445.01 (7).

History: 1999 a. 9.

5 SECTION 9. Chapter 445 (title) of the statutes is amended to read:

6 CHAPTER 445

7 FUNERAL DIRECTORS

8 AND CREMATORY AUTHORITIES

9 SECTION 10. Subchapter I (title) of chapter 445 [precedes 445.01] of the statutes  
10 is created to read:

11 CHAPTER 445

12 SUBCHAPTER I

13 GENERAL PROVISIONS

14 SECTION 11. Subchapter II (title) of chapter 445 [precedes 445.03] of the  
15 statutes is created to read:

16 CHAPTER 445

17 SUBCHAPTER II

18 FUNERAL DIRECTORS

19 SECTION 12. 445.16 of the statutes is renumbered 445.02.

20 SECTION 13. Subchapter III of chapter 445 [precedes 445.30] of the statutes is  
21 created to read:

22 CHAPTER 445 (hand return) all caps B centered

23 SUBCHAPTER III

24 CREMATORY AUTHORITIES

445.30 Definitions. As used in this subchapter:

1 (b) → (1) "Authorization form" means a form specified in s. 445.33. ✓

2 (b) → (2) "Authorizing agent" means an individual who acts as an authorizing agent  
3 under s. 445.32 or to whom a delegation of authority is made under s. 445.34. ✓

\*\*\*\*NOTE: The above includes people to whom delegations are made. Is that okay?

4 (b) → (3) "Business entity" has the meaning given in s. 452.01 (3j). ✓

\*\*\*\*NOTE: I think you also need to define "columbarium".

5 (b) → (4) "Cremated remains" means all human remains resulting from the  
6 cremation of a human body or body part and the residue of any container or foreign  
7 materials that were cremated with the body or body part. ✓

\*\*\*\*NOTE: See proposed s. 445.40 (4) (a) for the prohibition regarding prosthetics  
and medical devices.

8 (b) → (5) "Cremation" means the process of using heat to reduce human remains to  
9 bone fragments and includes processing or pulverizing the bone fragments. ✓

10 (b) → (6) "Cremation chamber" means an enclosed space within which cremation  
11 takes place. ✓

12 (b) → (7) "Crematory" means a building or portion of a building within which a  
13 cremation chamber is located. ✓

14 (b) → (8) "Crematory authority" means a person who operates a crematory. ✓

15 (b) → (9) "Human remains" means the body or part of <sup>the</sup> body of a deceased individual. ✓

16 (b) → (10) "Incapacitated" means unable to receive and evaluate information  
17 effectively or to communicate decisions.

\*\*\*\*NOTE: The above definition is based on s. 50.06 (1). See proposed s. 445.32 (2)  
below.

18 (b) → (11) "Niche" means a space in a columbarium that is used or intended to be used  
19 for the interment of cremated remains. ✓

20 **445.31 Registration; renewal. (1) PROHIBITION.** No person may cremate  
21 human remains unless one of the following applies:

1 (a) If the person is licensed as a funeral director licensed under subch. II or is  
 2 the operator of a funeral establishment for which a permit has been issued under  
 3 subch. II, the examining board has registered the person as a crematory authority  
 4 under sub. (2).

5 (b) If the person is not specified in par. (a), the department has registered the  
 6 person as a crematory authority under sub. (2).

\*\*\*\*NOTE: Do you want any exemptions from registration? Note the exemptions in  
 s. 445.16, stats., which this bill rennumbers as s. 445.02. Are they okay?

7 (2) REGISTRATION. The examining board or department shall register a person  
 8 as a crematory authority if the person does all of the following:

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

10 (b) Submits an application on a form provided by the examining board or  
 11 department that includes each of the following:

12 1. The name and address of the applicant or the business entity that the  
 13 applicant represents.

14 2. The address of the crematory.

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

\*\*\*\*NOTE: Without competency requirements (see the following NOTE), registration  
 appears to be more or less automatic. What if the board or DRL was unhappy with the  
 structure and the equipment that is described in an application? Shouldn't they have the  
 discretion to deny registration?

17 4. Any other information that the examining board or department may require.

\*\*\*\*NOTE: Are there any competency requirements that a person must satisfy?  
 Could the examining board or department impose such requirements in requiring the  
 applicant to provide other information?

\*\*\*\*NOTE: There is no need to refer to other information that may "reasonably" be  
 required. A state agency is subject to such a standard even if it isn't specified.

18 (3) RENEWAL. Renewal applications shall be submitted to the department or  
 19 examining board on a form provided by the department or examining board on or

1 before the applicable renewal date specified under s. 440.08 (2) (a) and shall include  
2 the applicable renewal fee specified under s. 440.08 (2) (a).

3 **445.32 Authorizing agents.** (1) Except as provided in subs. (3) and (4), only  
4 the following may act as an authorizing agent and direct the cremation of the human  
5 remains of a decedent:

\*\*\*\*NOTE: In addition to the people listed below, the instructions provide that, in the absence of those people, any person willing to assume responsibility may act as an authorizing agent. I'm not sure how that is supposed to work and it's not included in this draft. What responsibility is such a person assuming? Can a total stranger act as an authorizing agent?

6 (a) The decedent's spouse at the time of the decedent's death.

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

\*\*\*\*NOTE: Should there be more detail on the written objection? Because the other children must be notified, they will probably have an opportunity to provide a written objection, but what about the other individuals listed below?

13 (c) A surviving parent of the decedent, if all the individuals specified in pars.

14 (a) and (b) decline to act as authorizing agent but do not object to the cremation, or  
15 are dead or incapacitated, and unless another surviving parent of the decedent  
16 provides a written objection to the cremation to the crematory authority.

17 (d) A surviving individual related in the closest degree of kinship to the  
18 decedent, as determined under s. 990.001 (16), if all the individuals specified in pars.

19 (a) to (c) decline to act as authorizing agent but do not object to the cremation, or are

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

3 (2) An individual is incapacitated for purposes of sub. (1) if 2 physicians  
4 licensed under subch. II of ch. 448, or one physician licensed under subch. II of ch.  
5 448 and one psychologist licensed under ch. 455, have personally examined the  
6 individual and signed a statement specifying that the individual is incapacitated.  
7 Mere old age, eccentricity, or physical disability, either singly or together, are  
8 insufficient to make a finding that an individual is incapacitated. Neither of the  
9 individuals who make a finding that an individual is incapacitated may be a relative,  
10 as defined in s. 242.01 (11), of the individual.

\*\*\*\*NOTE: The above language is based on s. 50.06 (4). Is it okay?

11 (3) (a) Except as provided in par. (b), if a decedent's estate is insufficient to pay  
12 the expenses related to final disposition of the decedent's human remains, or if final  
13 disposition of the decedent's human remains is the responsibility of the state or a  
14 local unit of government, any of the following may act as an authorizing agent and  
15 direct the cremation of the decedent's human remains:

\*\*\*\*NOTE: I think the above is preferable to referring to a person who is "indigent".  
Is that okay?

\*\*\*\*NOTE: I made the exception in par. (b) apply to both types of people described  
in the above, instead of just people whose estates are insufficient. Is that okay?

\*\*\*\*NOTE: There is no priority for the following people and any one of them may act  
as authorizing agent. However, if, for example, there's a dispute between the coroner and  
guardian over cremation, who wins?

16 1. Any individual specified in sub. (1), notwithstanding whether another  
17 individual specified in sub. (1) is alive or not incapacitated and notwithstanding  
18 whether another individual specified in sub. (1) objects to the cremation.

\*\*\*\*NOTE: Is the above okay? I wasn't sure about your intent.



1           2. The coroner or medical examiner of the county in which the decedent's death  
2 occurred.

3           3. The decedent's guardian at the time of the decedent's death.

4           (b) The human remains of a decedent specified in par. (a) (intro.) may not be  
5 cremated if any adult spouse, adult sibling, adult child, parent, or guardian of the  
6 decedent objects in writing to the cremation or states in writing that cremation was  
7 contrary to the religious beliefs of the decedent or if there is any other evidence that  
8 cremation was contrary to the religious beliefs of the decedent.

      \*\*\*NOTE: The instructions refer to a family member, but there could be some  
ambiguity over who is a family member. Is the above consistent with your intent?

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

13           (5) An individual may act as an authorizing agent for purposes of directing the  
14 cremation of his or her own body part. ✓

      \*\*\*NOTE: I'm not sure why you want to allow an individual to authorize another  
to act as authorizing agent under the above circumstances. If an individual can authorize  
another, why can't he or she simply act as authorizing agent himself or herself?

15           **445.33 Authorization forms.** An authorizing agent may direct the cremation  
16 of the human remains of a decedent only by completing a form that includes all of the  
17 following:

      \*\*\*NOTE: Do you want to require the board and DRL to jointly promulgate rules  
establishing a form? Rules would ensure that forms are consistent. Also, you probably  
would want one set of rules that are jointly promulgated, as opposed to one set of rules  
for funeral directors and one set for everybody else. See proposed s. 445.43.

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

      \*\*\*NOTE: The instructions require the time of death. Is date okay?

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

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

7           (4) The name of the funeral director, funeral establishment, or cemetery that  
8 the authorizing agent authorizes to receive the cremated remains or, if alternative  
9 arrangements are made for receiving the cremated remains, a description of those  
10 arrangements.

\*\*\*\*NOTE: I added the part regarding alternative arrangements. Is it okay?

11           (5) If known by the authorizing agent, the manner in which the cremated  
12 remains are to be disposed.

\*\*\*\*NOTE: Is the above inconsistent with proposed s. 445.40 (1) (a), which provides  
that the authorizing agent is responsible for determining the manner of disposition?  
Therefore, shouldn't "if known" be deleted?

If so

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

15           (7) If a viewing or other services are planned, the date and time of the viewing  
16 or services.

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

19           **445.34 Delegation of authority.** An authorizing agent may, in writing,  
20 delegate the authority to direct the cremation of the human remains of a decedent  
21 to another individual. A delegation under this section shall include all of the  
22 following:

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

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

      \*\*\*\*NOTE: Why is it necessary to provide that the writing may be transmitted by  
various means, including electronic transmission? The above doesn't prohibit such  
transmission, so I don't think it's necessary to state that it's allowed. ✓

      \*\*\*\*NOTE: Perhaps I don't understand your intent, but it seems odd to be very  
stringent about who qualifies as an authorizing agent, but to allow an authorizing agent  
to delegate authority to anybody. ✓

5           **445.35 Liability of authorizing agent.** An authorizing agent is liable for  
6 damages resulting from authorizing the cremation of the human remains of a  
7 decedent.

      \*\*\*\*NOTE: The above corresponds to your section 7. Unless I don't understand your  
intent, I don't think the first item of your section is necessary. Regarding your third item,  
see proposed s. 445.40 (1) (a) and (b).

8           **445.36 Revocation of authorization.** Before a cremation is performed, an  
9 authorizing agent may cancel the cremation by providing the crematory authority  
10 with a written statement revoking the authorization form. An authorizing agent  
11 who revokes an authorization form shall provide the crematory authority with  
12 written instructions regarding the final disposition of the human remains.

      \*\*\*\*NOTE: The above corresponds to your section 8. I'm not sure what to say about  
the duties of a crematory authority upon revocation. Suppose the authorizing agent's  
instructions are ridiculous or are may be complied with only at great expense. Shouldn't  
there be some limit on the crematory authority's duty?

13           **445.37 Delivery and acceptance of human remains.** (1) RECEIPT FOR  
14 DELIVERY. A crematory authority that receives human remains from a person shall  
15 provide the person with a receipt that includes all of the following:

16           (a) The name of the decedent.

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

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

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

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

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

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

S.

two

\*\*\*\*NOTE: Because the information required is basically the same, I combined the  
your receipt requirements into one. Note that proposed 445.41 below requires the  
crematory authority to retain a copy of the receipt in its records.

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

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

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

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

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

1 4. The crematory authority has reason to believe that the human remains  
 2 contain a pacemaker, implant, or radiation-producing device that may be potentially  
 3 hazardous or cause damage to the cremation chamber or an individual performing  
 4 the cremation.

\*\*\*\*NOTE: The above corresponds to item 4 of your section 4. I don't think the requirement belongs in the form, but should apply on its own as a substantive requirement. Is it okay to address the issue in the context of accepting human remains? Also, you might want to revise the language so that it broadly refers to any type of device (not just the ones mentioned) that is hazardous, etc.

5 5. The cemetery authority has a lawful reason for the refusal.

\*\*\*\*NOTE: I don't understand why paragraph (b) above is necessary. A crematory authority, like any business, can, in general, choose who it does business with, correct? Why do you need to specify that it's okay for a crematory authority to turn away business under the specified circumstances? Also, the "lawful reason" condition begs the question, what is a lawful reason? The result might be the opposite of what you intend. For example, requiring a "lawful reason" might be interpreted as providing that the crematory authority must have a reason recognized by law for refusing acceptance, and that the crematory authority can't refuse acceptance simply because it doesn't want to, or because it is too busy, etc.

6 **445.38 Cremation requirements. (1) DOCUMENTATION.** A crematory  
 7 authority may not cremate the human remains of a decedent unless the authority  
 8 has received all of the following:

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

10 (b) A copy of the death certificate for the decedent.

\*\*\*\*NOTE: I'm assuming other states require death certificates. If not, then the above might prohibit cremating someone in this state if he or she died in a state that doesn't require death certificates. Is this a problem?

11 (c) A copy of the cremation permit issued under s. 979.10 (1) (a). ✓

12 (d) A copy of the report for final disposition } a human corpse prepared under  
 13 s. 69.18 (3). } of


\*\*\*\*NOTE: What if a report is not required under s. 69.18 (3)? For example, under s. 69.18 (3) (c), for a death in another state, written authorization under that state's law is required, instead of a report under s. 69.18 (3). Also, no report is required for a stillbirth. See s. 69.18 (3) (e). Perhaps the above should be revised to require a copy of the report only if the report is required under s. 69.18 (3)?

1           (2) HOLDING FACILITY. (a) Upon accepting delivery of human remains, a  
2 cemetery authority shall place the human remains in a holding facility until they are  
3 cremated, except that, if the cemetery authority obtains knowledge of a dispute  
4 regarding the cremation of the human remains, the cemetery authority may, until  
5 the dispute is resolved, return the human remains to the person who delivered the  
6 human remains or the funeral establishment or other business entity with which  
7 that person is affiliated.

\*\*\*\*NOTE: Your language allows for return to the "funeral home of record"? But isn't it possible for a funeral establishment not to be involved in the cremation? If so, is it okay to allow for return as provided in the above language?

\*\*\*\*NOTE: What if the person to whom the crematory authority wants to return the human remains refuses to accept the return? Is it your intent that such a person shouldn't be allowed to refuse the return? Whatever your intent is, I think the above language should be redrafted to make your intent clearer.

8           (b) A crematory authority shall restrict access to a holding facility to authorized  
9 personnel. A crematory authority may use a holding facility that is located in the  
10 same room in which a cremation chamber is located.

 \*\*\*\*NOTE: ~~second~~ <sup>second</sup> The above corresponds to your definition of "holding facility"? I'm not sure why the ~~2nd~~ <sup>2nd</sup> sentence is necessary. Is there some confusion over whether a holding facility may be in the same room as the cremation chamber? If not, I recommend deleting the sentence.

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

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

18           (c) A container may be used to hold human remains only if the container is  
19 composed of readily combustible materials that are resistant to leakage and spillage,


1 has the ability to be closed for complete covering of the human remains, and is  
2 sufficiently rigid to provide ease in handling.

\*\*\*\*NOTE: The above is based on your definition of "alternative container"? I didn't include some of your language because I'm not sure how it would be interpreted. For example, what is meant by requiring protection of the personal integrity of crematory personnel?

3 (4) VIEWINGS OR OTHER SERVICES. A crematory authority may not cremate  
4 human remains before the date and time specified in an authorization form under  
5 s. 445.33 (7).

6 (5) SIMULTANEOUS CREMATION. Unless a crematory authority obtains the prior  
7 written consent of each authorizing agent, a crematory authority may not  
8 simultaneously cremate the human remains of more than one individual within the  
9 same cremation chamber.


\*\*\*\*NOTE: Your language has <sup>e two</sup> exceptions to the above. First, you state that the above prohibition "does not prevent the simultaneous cremation within the same cremation chamber of body parts delivered to the crematory authority from multiple sources"? I don't understand what you're getting at. Can you provide me with more information? Second, you state that "the use of cremation equipment that contains more than one cremation chamber" is not prohibited. I don't see how you can interpret the above language to impose such a prohibition. The above language talks about the same cremation chamber, and doesn't address multiple chambers. Therefore, I don't think the ~~and~~ exception is necessary.

 Second

*cremated remains*

10 (6) RESIDUE REMOVAL. Upon completion of each cremation, a crematory  
11 authority shall, insofar as practicable, remove all of the recoverable residue of the  
12 cremation process from the cremation chamber.

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

15 (a) Except as provided in sub. (6), the container is a single container of sufficient  
16 size to hold the cremated remains. 

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

1           (8) **EXCESS REMAINS; ADDITIONAL CONTAINER.** If cremated remains that a  
2 crematory authority recovers from a cremation chamber do not fit within the  
3 container that the authorizing agent has selected, the crematory authority <sup>return</sup> shall  
4 the remainder of the human remains to the authorized agent or authorized agent's  
5 designee in a separate container.

      \*\*\*\*NOTE: Why is the above necessary? How else would the remainder be returned?  
What problem is the above supposed to address?

6           (9) **IDENTIFICATION SYSTEM.** A crematory authority shall maintain an  
7 identification system that ensures the identity of human remains throughout all  
8 phases of the cremation process.

9           **445.39 Deliveries of cremated remains.** A crematory authority may deliver  
10 cremated remains to another person only by making the delivery in person or by  
11 using a delivery service that has a system for tracking the delivery and that obtains  
12 a signed receipt from the person to whom the cremated remains are delivered.

13           **445.40 Disposition of cremated remains.** (1) **RESPONSIBLE PARTY.** (a)  
14 Except as provided in par. (b), the authorizing agent is responsible for determining  
15 the manner in which cremated remains are disposed.

16           (b) If the authorizing agent fails to determine the manner in which cremated  
17 remains are disposed, the crematory authority shall, no sooner than 30 days after  
18 cremation, deliver the cremated remains to the person who delivered the human  
19 remains to the crematory authority for cremation or the funeral establishment or  
20 other business entity with which that person is affiliated. No sooner than the 60 days  
21 after cremated remains are delivered under this paragraph, the person to whom they  
22 are delivered may determine the manner in which the human remains are disposed  
23 and shall make a written record of any determination that is made.



\*\*\*\*NOTE: The instructions require return to the “funeral home of record”. However, isn't it possible for a funeral establishment not to be involved in the cremation of human remains? Is so, is the above language okay? Also, shouldn't the above language specify that the if the crematory remains are returned, the recipient may not decline acceptance?

\*\*\*\*NOTE: The instructions require delivery in person or by registered mail. Is the above okay?

\*\*\*\*NOTE: I'm not sure if I got the 30-day deadline right. Is the point to require the crematory authority to hold on to the cremated remains for at least 30 days in order to give the authorizing agent the opportunity to determine the manner of disposition?

1 (c) The authorizing agent is liable for all reasonable expenses incurred in  
2 delivering and disposing of cremated remains under par. (b).

\*\*\*\*NOTE: Should there be any limitation, in addition to “reasonable” expenses? For example, should the least expensive manner of disposition be used?

\*\*\*\*NOTE: The instructions also refer to making the decedent's estate liable, but I'm not sure how the estate's liability should relate to the authorizing agent's liability.

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

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

6 (b) Scattering the remains in a scattering area.

\*\*\*\*NOTE: The requirements regarding scattering areas must be made more specific. The instructions define “scattering area” as an area designated for scattering. Under that definition, any area could be designated a scattering area and, therefore, the above requirement doesn't have any substantive effect. See also the NOTE below following  
7 sub. (3) (a) regarding scattering by land, air, or sea.

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

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

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

\*\*\*\*NOTE: Your instructions provide that the above does not apply to scattering by land, air, or sea. What is meant by these types of scattering? How are they different from scattering in a scattering area? I think you need to make the meaning of the exception clearer, as well as consistent with your intent regarding scattering areas.

(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 nonorganic material or a prosthetic  
3 or medical device of a decedent, that is obtained from cremating the human remains  
4 of the decedent.

*And what about organic matter?*

\*\*\*\*NOTE: Is nonorganic the right word? Shouldn't it be inorganic?

Ⓟ

\*\*\*\*NOTE: The paragraph above also corresponds to item 8 of your section 4. Instead of including your prohibition in the authorization form, I think it preferable to apply the prohibition directly to a crematory authority.

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

\*\*\*\*NOTE: The above <sup>two</sup> paragraphs correspond to your section 26. I don't think it's necessary to provide that prosthetic or medical devices must be disposed of in a lawful manner. If another law applies to the disposition, it isn't necessary for this bill to require compliance with that law.

7 **445.41 Records.** (1) A crematory authority shall maintain a permanent  
8 record of <sup>e</sup> each cremation at its place of business consisting of the name of the  
9 decedent, the date of the cremation, and a description of the manner in which the  
10 cremated remains are disposed.

11 (2) A crematory authority shall maintain as permanent records the  
12 documentation specified in s. 445.38 (1) and copies of receipts under s. 445.37 (1).

13 **445.42 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.

\*\*\*\*NOTE: I don't think it's necessary to refer to a crematory authority that has received the proper documentation, because that concept falls under complying with the 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. 445.33 (6).

1           **445.43 Rules.** The department and examining board may promulgate rules  
2 interpreting or administering the requirements of this subchapter only if they jointly  
3 promulgate the rules.

      \*\*\*NOTE: I think the above is necessary so that DRL and the board don't  
promulgate rules that are inconsistent.

4           **445.44 Discipline.** (1) Subject to the rules promulgated under s. 440.03 (1),  
5 the department may make investigations or conduct hearings to determine whether  
6 a violation of this subchapter or any rule promulgated under this subchapter has  
7 occurred.

8           (2) Subject to the rules promulgated under s. 440.03 (1), the department or  
9 examining board, depending on whether the department or examining board  
10 registered an individual, may reprimand an individual registered under this  
11 subchapter or deny, limit, suspend, or revoke a registration under this subchapter if  
12 the department or examining board finds that the applicant or individual has done  
13 any of the following:

14           (a) Made a material misstatement in an application for a registration or  
15 renewal of a registration.

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

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

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

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

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

1           **445.45 Penalties.** (1) Any individual who violates this subchapter or rule  
2 promulgated under this subchapter may be fined not more than \$1,000 or imprisoned  
3 for not more than 6 months or both.

4           (2) In addition to or in lieu of the penalties under sub. (1) and the remedies  
5 under s. 445.44 (2), an individual who violates this subchapter or any rule  
6 promulgated under this subchapter may be required to forfeit not more than \$1,000  
7 for each separate violation. Each day of continued violation constitutes a separate  
8 violation.

9           **SECTION 14. Effective date.**

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

12           \*\*\*\*NOTE: I think you need a delayed effective date to give DRL and the board time  
to register people.

(END)

**2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2804/P1ins  
MDK:.....

1

**INSERT 2-20:**

2

**SECTION 1. 69.18 (1) (a) 3. of the statutes is amended to read:**

3

**69.18 (1) (a) 3. A person acting under s. 157.02 or ~~445.16~~ 445.02.**

**History:** 1985 a. 315; 1985 a. 332 s. 253; 1989 a. 307; 1993 a. 386; 1995 a. 357; 1997 a. 114.


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

LRB-2804/P1dn

MDK:./:....

cjs

Myra Shelton:

 This, the funeral directors examining board's request. Please note that it is a preliminary draft with NOTES in the text that raise questions about your intent. Also note that some of the language may be different than what was requested and that I didn't define all of the terms that were requested. I would be happy to discuss my changes with you.

After you review the draft and respond to my questions, I will prepare a draft that may be introduced.

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

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

LRB-2804/P1dn  
MDK:cjs:rs

October 18, 2001

Myra Shelton:

This is the funeral directors examining board's request. Please note that it is a preliminary draft with NOTES in the text that raise questions about your intent. Also note that some of the language may be different than what was requested and that I didn't define all of the terms that were requested. I would be happy to discuss my changes with you.

After you review the draft and respond to my questions, I will prepare a draft that may be introduced.

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

## Kunkel, Mark

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**From:** Shelton, Myra  
**Sent:** Thursday, February 21, 2002 1:31 PM  
**To:** Kunkel, Mark  
**Cc:** Herrera, Oscar-DRL; Horstman, Greg; Dusso, William; Hansen, Clete; Rothstein, Jacquelynn-DRL  
**Subject:** Urgent Drafting Request: 01-2804/P1-Crematories

Hi Mark,

Hope all is well with you. I know you are "super" busy-me too! Smile. But we have received several inquiries from legislators and the media regarding our laws with respect to crematories' regulation. You can about guess that this would be a really high priority now given the Georgia situation. Therefore, Mark, we need to have our LRB draft with the changes by next week for Secretary Herrera and the Funeral Directors Examining Board and others to review. We want to get something introduced and maybe still passed this legislative session. Thanks a million for all your efforts on this request. Take care and enjoy your upcoming weekend. Myra

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

**From:** Shelton, Myra  
**Sent:** Thursday, January 10, 2002 3:43 PM  
**To:** Kunkel, Mark  
**Cc:** Hansen, Clete; Rothstein, Jacquelynn-DRL; Dusso, William  
**Subject:** FW: 01-2804/P1-Crematories

Hi Mark,

Below are the new drafting changes we would like to have made to 01-2804/P1. If you have any questions please contact Clete Hansen at 6-5439 or by email. Thanks for all your help on this. Hope you had very good holidays. Myra

1. Do not place the proposed crematory regulation in Chapter 445. Possibly, place it in a new subchapter in Chapter 440.
2. Change the regulatory authority to just the Department of Regulation and Licensing, regardless of whether the applicant for a crematory authority registration is a cemetery, a funeral director or some other person. There should be only one type of crematory authority registration.
3. Do not give authority to both the Department and the Funeral Directors Examining Board to jointly promulgate administrative rules relating to the operation of crematories. The Department alone should be given this authority.
4. Only the Department should be given the authority to discipline registered crematory authorities.
5. There should be statutory language, somewhat similar to the nonstatutory provision that was in the new regulation of home inspectors (1997 Wisconsin Act 81), that requires the Department Secretary to establish a committee under section 15.04 (1) (c) of the statutes to advise the Department of Regulation and Licensing in matters relating to the regulation of registered crematory authorities. The committee shall consist of 3 individuals who are licensed funeral directors and who operate a crematory, 3 individuals who own or operate a cemetery and who operate a crematory, and 1 public member. The Secretary of the Department, or a person designated by the Secretary, shall serve as the nonvoting chairperson of the committee

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

**From:** Shelton, Myra  
**Sent:** Tuesday, November 13, 2001 3:00 PM  
**To:** Kunkel, Mark  
**Cc:** Hansen, Clete; Rothstein, Jacquelynn-DRL; Dusso, William  
**Subject:** FW: 01-2804/P1-Crematories (Funeral Directors Examining Board)

Hi Mark, attached are the requested drafting changes for LRB2804/P1 that the Funeral Directors Examining Board would like to have made to their bill draft. If you have any questions please contact Division Administrator Clete Hansen (6-5439), Legal Counsel Jacquelynn Rothstein (6-5836), or as always me-smile! Please make sure that the draft is emailed to me only. Thanks for all your help on this. Wishing you a very Happy Thanksgiving Day. Myra





Crematory Notes to  
Kunkel.doc

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

**From:** Gretschmann, Karen  
**Sent:** Thursday, October 18, 2001 4:52 PM  
**To:** Myra Shelton  
**Subject:** 01-2804/P1



01-2804/P1



01-2804/P1dn

## Regulation of Crematories

The Board reviewed LRB-2804/P1dn and made the following recommendations to Mark Kunkel, a Legislative Attorney in the Legislative Reference Bureau:

✓ Page 3, the Note following line 15 – the Board likes this provision; however, the provision should, perhaps, pertain to any person that receives cremated human remains for disposal, not just cemeteries. Please consider whether this provision might fit better in statutes relating to vital statistics.

✓ Page 4, the Note following Line 3—yes this fine.

✓ Page 5, the Note following line 9 – yes, this is fine.

✓ Page 5, the Note following line 10 – yes. Refer Mr. Kunkel to a definition that he drafted in LRB-0160/3: “Columbarium” means a building, structure, or part of a building or structure that is used or intended to be used for the inurnment of cremains.” Mr. Kunkel had also defined “columbarium space” to mean a niche, crypt, or specific place in a columbarium that contains or is intended to contain cremains.

✓ Page 5, the Note following line 11 – remove “all.” Also, “recovered” is a better term, because not all of the cremated remains are recovered. *no - "all rem's new" work.*

✓ Page 5, line 20 – state: “a person who owns or operates a crematory.”

✓ Page 6, the Note following line 2 – okay.

✓ Page 6, the Note following line 12 – no exemptions are needed at this time. If certain persons feel they should be exempted, they can make their case after introduction of the bill.

✓ Page 7, the Note at the top of the page – no competency standards are needed. The committee that developed the proposal focused on standards of operation. The committee also reviewed the statutes of other states and noted that only Florida has competency standards.

✓ Page 7, the first Note following line 1 – no competency standards are needed.

✓ Page 7, the second Note following line 1 – okay, leave out “reasonably.”

✓ Page 7, the Note following line 8 – yes, it could be a total stranger. That can actually happen. Insert, with proper references, the provision that was in the proposal sent to the LRB. See page 4. It reads: “(6) In the absence of any person under subd. (1) through (5) any person willing to assume the responsibility as the authorizing agent...”

1 ✓ Page 7, the Note following line 15 – the intent is that this should refer to the written objections of any equally-related persons, *i.e.*, the persons described in each paragraph under 445.32 (1).

*doesn't  
give written  
objections*

✓ Page 8, the Note following line 17 – okay.

✓ Page 8, the Note following line 22 – okay.

✓ Page 9, the first Note at top of page – okay.

✓ Page 9, the second Note at top of page – A set priority is needed for practical reasons. See the order in the Board's proposal on page 3, Section (5), at the bottom of the page. It should say: "the following persons, in the priority listed, may serve as the authorizing agent."

✓ Page 9, the Note following line 3 – the Board is confused by lines 1 to 3. What is the drafter trying to say? *deleted*

✓ Page 9, the Note following line 11 – objection can only be made by the persons in 445.32 (1) (a) to (d), and in the same order of priority as in (a) to (d).

✓ Page 9, the Note following line 17 – the provision in the Board's proposal on page 4, (7), should be inserted here. It is feasible that a person would authorize another person to serve as the authorizing agent for his or her own body part, because a person may be mentally incapacitated following a procedure.

✓ Page 10, the Note following line 3 – no rules are needed to establish a form.

✓ Page 10, the Note following line 4 – both the time and date are needed.

✓ Page 10, the Note following line 14 – okay.

✓ Page 10, the Note following line 16 – yes, it is. "If known" should not be deleted.

✓ Page 11, the first Note following line 12 – the Board wishes to include electronic communication, particularly, facsimile transmissions.

✓ Page 11, the second Note following line 12 – the Board wishes to allow an authorizing agent to delegate authority to anybody, because this is a practical matter that can occur (for example, a person who is overseas).

✓ Page 11, the Note following line 15 – the Board prefers the language in its proposal; however, the Board would accept the drafter's language if legally sufficient to encompass misrepresentations.

✓ Page 12, the Note at the top of the page – okay.

✓ Page 12, the Note following line 16 – there should be two receipts: one for when the body is brought into the crematory, the other when the cremains are released by the crematory. Two separate parties can be involved in this receipting process.

✓ Page 13, the Note following line 11 – no. The family may be much more aware that a device was implanted than a funeral home would be. This should be on the authorization form. It should be in both places. Okay to the drafter's second comment, that is, to use language that is broader *e.g.*, "any type of device that is hazardous".

✓ Page 13, the Note following line 12 – paragraph (b) should be retained, with the exception of subd. (5).

✓ Page 14, the Note at the top of the page – this is not a problem.

✓ Page 14, the Note following line 3 – yes, Mr. Kunkel should revise this item, as he suggests.  
✓ Also, Lines 5-7, refer to a "cemetery" authority. Those references should be changed to "crematory" authority.

✓ Page 14, the first Note following line 10 – yes, this is okay.

✓ Page 14, the second Note following line 10 – yes, please make it clearer that such a person should be unable to refuse.

✓ Page 14, the Note following line 13 – okay.

✓ Page 15, the Note following line 11 – "alternative container" is the accepted word in the industry and is used in its marketing efforts. The Board prefers using the definition in its proposal. Replace "personal integrity" in the Board's draft with "health, safety and welfare."

✓ Page 15, the Note following line 18 – "Unless the crematory authority receives..." The rest is okay.

✓ Page 16, the Note following line 14 – keep this provision in the draft.

✓ Page 17, the first Note following line 11 – yes to each one of Mr. Kunkel's questions.

✓ Page 17, the second Note following line 11 – okay.

✓ Page 17, the third Note following line 11 – okay.

✓ Page 17, the first Note following line 13 – no limitation needed.

? \*  
Page 17, the second Note following line 13 – the decedent's estate could be liable, along with or separate from the authorizing agent.

✓ Page 18, the Note at the top of the page – remove "scattering" in front of "area." Change the concept to read: "in a lawfully-permitted area."

no  
Page 18, the Note following line 6 – insert the following from the Board's proposal on page 9, Section 22, paragraph 1, sentence 2: "This prohibition does not apply to the scattering of

cremated remains on the land, sea or air." The Board wishes to differentiate between such scatterings and a scattering in a place that has been designated and established specifically for scattering cremains.

✓ Page 18, the Note following line 11 – it should read, "inorganic or organic." *no "any material" words.*

✓ Page 18, the second Note following line 11 – okay.

\* ✓ ~~Page 18, the Note following line 13 – the Board believes there is no other law. The Board~~ *WHAT?*  
~~prefers its language regarding "in a lawful manner."~~

✓ Page 19, the Note following line 9 – okay.

✓ Page 19, the Note following line 14 – okay.

✓ Page 21, the Note following line 9 – okay.

✓ Page 21, the Note at the top of the page – okay. Choose a reasonable date.

**MOTION:** Rick Unbehaun moved, seconded by Robert Cress, to permit Dan Densow to review the next draft and to decide whether a special meeting or a telephone conference call is needed. Motion carried unanimously. (Peter Schils was not present for the motion and was not present for any of the remaining items on the agenda.)

✓ N.B. One additional note to Mark Kunkel. The Cemetery Advisory Committee reviewed the bill draft this morning. It concluded that lines 7-10 on page 6 could more clearly state that a funeral director or a funeral establishment that operates a crematory must obtain a separate registration as a crematory authority. We have called this suggestion to the attention of a Board member, Dan Densow, and asked him to confirm that he does want the bill draft to state such a requirement.