

Kunkel, Mark

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.

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.”

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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).

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."

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

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

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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.

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01-2804/P1



01-2804/P1dn

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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.

SA✓

P2

THIS WEEK

DN

PGS

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in editing
Wed.. 2/27
pm

INSERTS

regenerate

1 AN ACT *to renumber* 445.16; *to amend* 15.405 (16), 49.47 (4) (i) 1., 69.18 (1) (a)
 2 1., 69.18 (1) (a) 3., 157.06 (8) (c), 157.62 (4), 440.947 (1) (d) and chapter 445
 3 (title); and *to create* 157.62 (3) (b) 1m., 440.08 (2) (a) 24m., subchapter I (title)
 4 of chapter 445 [precedes 445.01], subchapter II (title) of chapter 445 [precedes
 5 445.03] and subchapter III of chapter 445 [precedes 445.30] of the statutes;
 6 **relating to:** regulating the cremation of human remains, granting
 7 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:

8

SECTION 1. 15.405 (16) of the statutes is amended to read:

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

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

7 **49.47 (4) (i) 1.** The department shall request a waiver from the secretary of the
8 federal department of health and human services to permit the application of subd.
9 2. The waiver shall request approval to implement the waiver on a statewide basis,
10 unless the department of health and family services determines that statewide
11 implementation of the waiver would present an obstacle to the approval of the waiver
12 by the secretary of the federal department of health and human services, in which
13 case the waiver shall request approval to implement the waiver in 48 pilot counties
14 to be selected by the department of health and family services. Within 30 days after
15 August 12, 1993, the department of regulation and licensing shall notify funeral
16 directors licensed under subch. II of ch. 445, cemetery associations, as defined in s.
17 157.061 (1r), and cemetery authorities, as defined in s. 157.061 (2), of the terms of
18 the waiver required to be requested under this subdivision. If the waiver is approved
19 by the secretary of the federal department of health and human services and if the
20 waiver remains in effect, subd. 2. shall apply.

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

22 **69.18 (1) (a) 1.** A funeral director licensed under subch. II of ch. 445 acting in
23 person or through the agency of another funeral director licensed under subch. II of
24 ch. 445.

25 **SECTION 4.** 69.18 (1) (a) 3. of the statutes is amended to read:

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

2 SECTION 5. 157.06 (8) (c) of the statutes is amended to read:

3 157.06 ~~(8)~~ (c) If there has been an anatomical gift, a physician may remove any
4 donated parts of the body, a technician may remove any donated tissue or bone and
5 an enucleator may remove any donated eyes or parts of eyes, after determination of
6 death by a physician. Any individual acting under the direction of a physician and
7 any funeral director licensed under subch. II of ch. 445 may perform the functions
8 of an enucleator under this section if he or she has completed a course in eye
9 enucleation and holds a valid certification of competence from a medical college
10 approved by the medical examining board under s. 448.05 (2). A certificate of
11 competence shall be valid for 3 years.

12 SECTION 6. 157.62 (3) (b) 1m. of the statutes is created to read:

13 157.62 (3) (b) 1m. Records ~~that identify the cremated human remains that are~~
14 ~~disposed of at the cemetery, including the name of the decedent, the date of~~
15 ~~disposition, and the manner in which the cremated human remains are disposed.~~ *required under s. 440.80(5)*

****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?

16 SECTION 7. 157.62 (4) of the statutes is amended to read:

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

1 ~~SECTION 8.~~ 440.08 (2) (a) 24m. of the statutes is created to read:
 2 440.08 (2) (a) 24m. Crematory authority: January 1 of each even-numbered
 3 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?

4 SECTION 9. 440.947 (1) (d) of the statutes is amended to read:
 5 440.947 (1) (d) "Person" does not include a person issued a funeral director's
 6 license under subch. II of ch. 445 or an operator of a funeral establishment, as defined
 7 in s. 445.01 (7).

8 SECTION 10. Chapter 445 (title) of the statutes is amended to read:

9 **CHAPTER 445**
 10 **FUNERAL DIRECTORS**
 11 **AND CREMATORY AUTHORITIES**

12 SECTION 11. Subchapter I (title) of chapter 445 [precedes 445.01] of the statutes
 13 is created to read:

14 **CHAPTER 445**
 15 **SUBCHAPTER I**
 16 **GENERAL PROVISIONS**

17 SECTION 12. Subchapter II (title) of chapter 445 [precedes 445.03] of the
 18 statutes is created to read:

19 **CHAPTER 445**
 20 **SUBCHAPTER II**
 21 **FUNERAL DIRECTORS**

22 SECTION 13. 445.16 of the statutes is ~~repealed~~ ~~amended~~ ~~to read:~~ ~~445.02~~ ~~amended to read:~~

INT
4-22

1

SECTION 14. Subchapter ~~III~~ of chapter ~~445~~ ⁴⁴⁰ [precedes ~~445.30~~ ^{440.70}] of the statutes is created to read:

2

3

CHAPTER ~~445~~ ⁴⁴⁰ ← (B)

4

SUBCHAPTER ~~III~~ ^{VI} ← caps

5

CREMATORY AUTHORITIES

6

~~445.30~~ ^{440.70} Definitions. As used in this subchapter:

7

(1) "Authorization form" means a form specified in s. ~~445.31~~ ^{440.73}

8

(2) "Authorizing agent" means an individual who acts as an authorizing agent under s. ~~445.32~~ ^{440.72} or to whom a delegation of authority is made under s. ~~445.34~~ ^{440.74} ^{440.74} ^{440.74}

9

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

10

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

11

(4) "Cremated remains" means all human remains ~~resulting~~ ^{recovered} from the cremation of a human body or body part and the residue of any container or foreign materials that were cremated with the body or body part.

12

13

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

14

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

15

16

(6) "Cremation chamber" means an enclosed space within which cremation takes place.

17

18

(7) "Crematory" means a building or portion of a building within which a cremation chamber is located.

19

20

(8) "Crematory authority" means a person who ^{owns or} operates a crematory.

21

⁽¹¹⁾ ^(B) "Human remains" means the body or part of the body of a deceased individual.

22

5-10 →

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

(B)

1 (12) (10) "Incapacitated" means unable to receive and evaluate information
2 effectively or to communicate decisions.

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

(B)

3 (13) (11) "Niche" means a space in a columbarium that is used or intended to be used
4 for the interment of cremated remains.

6-11

440.71 (B)

5 ~~440.71~~ Registration; renewal. (1) PROHIBITION. No person may cremate
6 human remains unless one of the following applies:

7 (a) If the person is licensed as a funeral director under ~~sub. (1)~~ or is the
8 operator of a funeral establishment for which a permit has been issued under ~~sub. (1)~~ *ch. 445*

9 ~~and~~ *and* the examining board has registered the person as a crematory authority under
10 sub. (2). *ch. 445*

11 (b) If the person is not specified in par. (a) the department has registered the
12 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?

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

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

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

18 1. The name and address of the applicant or the business entity that the
19 applicant represents.

20 2. The address of the crematory.

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

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

1 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.

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

(B) 440.72

6 ~~440.12~~ **Authorizing agents.** (1) Except as provided in subs. (3) and (4), only
7 the following may act as an authorizing agent and direct the cremation of the human
8 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?

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

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

5 (d) A surviving individual related in the closest degree of kinship to the
 6 decedent, as determined under s. 990.001 (16), if all the individuals specified in pars.
 7 (a) to (c) decline to act as authorizing agent but do not object to the cremation, or are
 8 dead or incapacitated, unless another surviving individual of the same degree of
 9 kinship provides a written objection to the cremation to the crematory authority.

✓
 8-9 →

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

***NOTE: ~~The above language is based on s. 59.06 (4). Is it okay?~~

18 (3) ~~Except as provided in par. (1)~~ if a decedent's estate is insufficient to pay
 19 the expenses related to final disposition of the decedent's human remains, or if final
 20 disposition of the decedent's human remains is the responsibility of the state or a
 21 local unit of government, ~~any of~~ the following may act as an authorizing agent and
 22 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?

persons, in the priority listed,

****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?

(a) to (d), unless one of those individuals

1 9 (a) Any individual specified in sub. (1) ~~notwithstanding whether another~~ individual specified in sub. (1) is alive or not incapacitated and notwithstanding whether another individual specified in sub. (1) objects to the cremation.

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

4 9 (b) The coroner or medical examiner of the county in which the decedent's death occurred.

6 9 (c) The decedent's guardian at the time of the decedent's death.

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

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

or authorize another individual to act as an authorizing agent

16 (5) An individual may act as an authorizing agent for purposes of directing the 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?

440.73 (B)

1 ~~440.73~~ Authorization forms. An authorizing agent may direct the cremation
2 of the human remains of a decedent only by completing a form that includes all of the
3 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.

4

(1) The name of the decedent and the date ^{and time} of the decedent's death.

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

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

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

10-10

11 (B) (5) ~~(4)~~ The name of the funeral director, funeral establishment, or cemetery that
12 the authorizing agent authorizes to receive the cremated remains or, if alternative
13 arrangements are made for receiving the cremated remains, a description of those
14 arrangements.

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

15 (B) (6) ~~(5)~~ If known by the authorizing agent, the manner in which the cremated
16 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? If
so, shouldn't "if known" be deleted?

17 (B) (7) ~~(6)~~ An itemized list of any valuables on the decedent's person that are to be
18 removed prior to cremation and returned to the authorizing agent.

440.74 (B)

1 (A) (8) If a viewing or other services are planned, the date and time of the viewing
2 or services.

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

5 **440.74** Delegation of authority. An authorizing agent may, in writing,
6 delegate the authority to direct the cremation of the human remains of a decedent
7 to another individual. (A) ~~delegation under this section~~ shall include all of the

8 following:
The delegation may be transmitted by facsimile or other electronic means.

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

11 (2) The name and address of the individual to whom the delegation is made and
12 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.

(B) 440.75

13 **445.35** Liability of authorizing agent. An authorizing agent is liable for
14 damages resulting from authorizing the cremation of the human remains of a
15 decedent.

(B) 440.76

***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).

16 **445.36** Revocation of authorization. Before a cremation is performed, an
17 authorizing agent may cancel the cremation by providing the crematory authority
18 with a written statement revoking the authorization form. An authorizing agent
19 who revokes an authorization form shall provide the crematory authority with
20 written instructions regarding the final disposition of the human remains.

440.77 (B)

****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?

445.37

1 **445.37 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.

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

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:

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

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

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

8 4. The crematory authority has reason to believe that the human remains
9 contain a ~~pacemaker implant or radiation-producing~~ device that may be ~~potentially~~
10 hazardous or cause damage to the cremation chamber or an individual performing
11 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.

12 5. The ~~crematory~~ 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.

440.78

13 ⁰⁷
14 ~~440.78~~ Cremation requirements. (1) DOCUMENTATION. A crematory
15 authority may not cremate the human remains of a decedent unless the authority
16 has received all of the following:

- 16 (a) An authorization form completed by an authorizing agent.
- 17 (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?

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

(d) ~~Accepted~~ ^{If a} report for final disposition of a human corpse ~~prepared~~ ^{is required} under s. 69.18 (3) ~~),~~ ^{a copy of the report}

****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)?

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

****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.

11
12
13

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

****NOTE: The above corresponds to your definition of "holding facility." I'm not sure why the second 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.~~

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 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, ~~and~~ is
11 sufficiently rigid to provide ease in handling.

↑ and is able to protect the health and safety of crematory personnel

****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?

440.73

12 (4) VIEWINGS OR OTHER SERVICES. A crematory authority may not cremate
13 human remains before the date and time specified in an authorization form under
14 s. ~~440.73~~ ⁰⁷ (8).

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

****NOTE: Your language has two 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 second exception is necessary.

1 (6) RESIDUE REMOVAL. Upon completion of each cremation, a crematory
2 authority shall, insofar as practicable, remove all of the cremated remains from the
3 cremation chamber.

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

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

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

10 (8) EXCESS REMAINS; ADDITIONAL CONTAINER. If cremated remains that a
11 crematory authority recovers from a cremation chamber do not fit within the
12 container that the authorizing agent has selected, the crematory authority shall
13 return the remainder of the human remains to the authorized agent or authorized
14 agent's 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?

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

18 **440.79** Deliveries of cremated remains. A crematory authority may deliver
19 cremated remains to another person only by making the delivery in person or by
20 using a delivery service that has a system for tracking the delivery and that obtains
21 a signed receipt from the person to whom the cremated remains are delivered.

Ⓞ The crematory authority shall

INS. 16 21

440.79 B

440-80

08
440.40

1 **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. No sooner than ~~the~~ 60 days
9 after ~~the~~ cremated remains are delivered under this paragraph, the person to whom they
10 are delivered may determine the manner in which the human remains are disposed
11 and shall make a written record of any determination that is made.

neither of which
may refuse to accept the
human remains

****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?

12 (c) The authorizing agent is liable for all reasonable expenses incurred in
13 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.

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

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

17 (b) Scattering the remains in ~~an~~ ^{an} ~~area~~ ^{area} in which the scattering of cremated remains is lawful

****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 sub. (3) (a) regarding scattering by land, air, or sea.

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

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

5 (a) Dispose of cremated remains in a manner or location that commingles the
6 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.

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

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

9 (a) Sell any material or device, including ~~nonorganic material~~ a prosthetic
10 or medical device of a decedent, that is obtained from cremating the human remains
11 of the decedent.

****NOTE: Is nonorganic the right word? Shouldn't it be inorganic? And what about organic matter?

****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 is preferable to apply the prohibition directly to a crematory authority.

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

****NOTE: The above two 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.

14 **440.41** Records. (1) A crematory authority shall maintain a permanent
15 record of each cremation at its place of business consisting of the name of the

440.81 (B)

18-13 ✓

1 decedent, the date of the cremation, and a description of the manner in which the
2 cremated remains are disposed.

3 (2) A crematory authority shall maintain as permanent records the
4 documentation specified in s. ~~440.88~~ (1) and copies of receipts under ~~ss. 440.87~~ (1).

440.78

ss. 440.77

and 440.79

440.82 B

440.82

5 **Exemptions from liability.** (1) Except as provided in sub. (2), a
6 crematory authority is immune from civil liability for damages resulting from
7 cremating human remains, including damages to prosthetic or medical devices or
8 valuables of the decedent, if the authority has complied with the requirements of this
9 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.

440.73

10 (2) A crematory authority is liable for damages resulting from the authority's
11 failure to return valuables specified on an authorization form under s. ~~440.83~~ (6) (7)

440.83 B

440.83

12 **Rules.** The department ~~and examining board~~ may promulgate rules
13 interpreting or administering the requirements of this subchapter ~~only if they jointly~~
14 ~~promulgate the rules.~~

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

440.84 B

440.84

15 **Discipline.** (1) Subject to the rules promulgated under s. 440.03 (1),
16 the department may make investigations or conduct hearings to determine whether
17 a violation of this subchapter or any rule promulgated under this subchapter has
18 occurred.

19 (2) Subject to the rules promulgated under s. 440.03 (1), the department ~~or~~
20 ~~examining board, depending on whether the department or examining board~~
21 ~~registered an individual,~~ may reprimand an individual registered under this
22 subchapter or deny, limit, suspend, or revoke a registration under this subchapter

1 if the department ~~examining board~~ finds that the applicant or individual has done
2 any of the following:

3 (a) Made a material misstatement in an application for a registration or
4 renewal of a registration.

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

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

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

10 (e) Advertised, practiced, or attempted to practice as a crematory authority
11 under another person's name. 440.85 B

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

13 ~~447.45~~ ^{0 8} Penalties. (1) Any individual who violates this subchapter or rule
14 promulgated under this subchapter may be fined not more than \$1,000 or imprisoned
15 for not more than 6 months or both. 440.84

16 (2) In addition to or in lieu of the penalties under sub. (1) and the remedies
17 under s. ~~447.44~~ ^{0 8} (2), an individual who violates this subchapter or any rule
18 promulgated under this subchapter may be required to forfeit not more than \$1,000
19 for each separate violation. Each day of continued violation constitutes a separate
20 violation.

21 SECTION 15. Effective date.

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

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

1

(END)

5-10

BILL

1 157.061 (1b) "Board" means the cemetery board.

2 SECTION 12. 157.061 (1d) of the statutes is created to read:

3 157.061 (1d) "Burial space" means a space that is used or intended to be used
4 for the burial of human remains and, when used in reference to the sale, purchase,
5 or ownership of a burial space, includes the right to bury human remains in the
6 burial space.

7 SECTION 13. 157.061 (1j) of the statutes is created to read:

8 157.061 (1j) "Business representative" has the meaning given in s. 452.01 (3k).

9 SECTION 14. 157.061 (1p) of the statutes is created to read:

10 157.061 (1p) "Cemetery" means a place that is dedicated to and used or
11 intended to be used for the final disposition of human remains.

12 SECTION 15. 157.061 (2m) of the statutes is amended to read:

13 157.061 (2m) "Cemetery lot" means a grave or 2 or more contiguous graves and,
14 when used in reference to the sale, purchase or ownership of a cemetery lot, includes
15 the right to bury human remains in that cemetery lot.

16 SECTION 16. 157.061 (3) of the statutes is amended to read:

17 157.061 (3) "Cemetery merchandise" means goods associated with the burial
18 of human remains, including monuments, markers, nameplates, vases, and urns,
19 and any services that are associated with supplying or delivering those goods or with
20 the burial of human remains and that may be lawfully provided by a cemetery
21 authority, including opening and closing of a burial space. The term does not include
22 caskets or outer burial containers.

23 SECTION 17. 157.061 (3g) of the statutes is created to read:

24 (3m) ~~or structure~~ "Columbarium" means a building, structure, or part of a building
25 or structure that is used or intended to be used for the inurnment of cremains.

cremated remains ✓

~~(14) "Operator of a funeral establishment"
has the meaning given in §. 445.01(7).
445.01(7)~~

DO NOT USE THIS INSERT

900 21

8-9

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

10-10

(B)

m

¶

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

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crematory authority shall ensure that the
crematory authority shall ensure that the

The receipt shall include all of the following:
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99

(a) The name of the decedent.

99

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

99

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

99

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

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18-13

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CD

(5) RECORDS. Any person that receives cremated remains shall maintain records that identify the cremated remains that are disposed of, including the name of the decedent, the date of disposition, and the manner in which the cremated remains are disposed of.

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Ⓢ

1. Please note the change to
157.62(3)(b) Im.

s. 157.62(3)(b) Im. and the creation of

s. 440.80(5). Do these modifications

adequately address

adequately address your concerns?

~~that~~
wi. ~~the~~ the requirement ~~to~~ apply to any
person ~~that~~ who receives cremated human
remains?

~~DN~~

① 2. In s. 440.70 (4), I changed "resulting" to "recovered" "resulting" to "recovered" but did not remove

"all." Shouldn't "cremated remains" refer to all the human remains recovered from cremation?
"cremated remains" recovered

(because, for example, a decedent cannot authorize cremation)?

② 3. As ~~drafted~~ ⁱⁿ s. 440.71 (2), if a person submits an application and pays the fee, DRL will have no authority to deny registration

registrations OK?

③ 4. In s. 440.72 (1), the term "surviving" is used in pars. (b), (c), and (d), but not in par. (a). Is it needed in par. (a)? Or should it be deleted from the other paragraphs?

④ 5. In s. 440.74 (intro.), I added "facsimile or other electronic means" as you requested,

but now wonder whether you also need it in 440.72

440.76
ss. 440.72 (1)(b), (c), and (d) and (3)(b), 440.76, 440.78 (3)(b) and (5), and 440.80 (3) (intro.) 440.78 (3)(b) and (5), and 440.80 (3) (intro.)

If you include the language in only one place, the ^{clear} implication is that electronic transmission is not ^{allowed} allowed.

Is that your intent? In other words, is that your intent? If not, I advise deleting it everywhere. ✓

④

7. ~~Regarding~~ I did not understand

your response to the question in the following ^(CS) Note showing s. 440.76. Do you mean the section is OK as is?

s. 440.78(3)(c)

④

8. In s. 440.78(3)(c), I did not use

unnecessary. "alternative container" because it is unnecessary.

~~Of course~~ The industry is still free to use the term in its marketing efforts.

✓
INS. B
④

10. Because "land, sea, and air" ^{covers} covers ^{planet} planet all areas of the planet, including "scattering"

440.80
areas" (areas described in s. 440.80 (2)(b)),
I did not specify that the prohibition

in s. 440.80 (3)(a) does not apply to
scattering on land, sea, or air. The
resulting provision would be meaningless.
resulting provision would be meaningless.

(9)

440.80 (4) (a) removed
11. In s. 440.80 (4)(a), I removed
"nonorganic" material because "material"
should cover all
should cover all material, both
organic and inorganic.

(9)

understand your response to
12. I don't understand your response to
the ^(CS) Note that followed s. 440.80 (4)(b).

If, as the ^{Board} Board believes, there is no other
law that explicitly governs disposal
of prosthetic or medical devices, it would
make no sense to require that they be
make no sense to require that they be

disposed of
disposed of "in a lawful manner."

If there is a law governing the disposal, ^{necessary} disposal, then it isn't necessary for this bill to require compliance with that law.

9

13. Regarding your N.B.: s. 440.71 (1)
N.B.: s. 440.71 (1)

has been ~~greatly~~ modified as a result of e-mail from Myra Shelton on

January 10. Is it OK now?

11

14.

14. In Myra's e-mail, she asked that the draft ^{require} ^{department} ^{create} the ^{secretary} to create a

committee under s. 15.04 (1)(c). I did not include that in the draft ^{if it is unnecessary;} because the secretary

may create a committee under s. 15.04 (1)(c) unilaterally without such a provision. If you want

a permanent council, let me know
and I'll create one under s. 15.407.

PG

(A)

(9)

5. I don't understand your response to
the ^(CS) NOTE following ^{previous} ~~the~~ page 7, line 15, of the previous

draft. Please explain. Note that
440.72 (3) revised.

s. 440.72 (3) has been revised. Is it ok now?

~~Also, note that I deleted "or state in~~

~~writing that cremation was contrary~~ In
par. (a)

par. (a) of that subsection, who would determine
whether there is

whether there is "evidence that cremation was
the decedent's religious beliefs?
contrary" to the decedent's religious beliefs?

^{revised}
6. I ~~of~~ s. 440.72(5) as you requested,
but I don't understand your response to the
Note.

assuming that the
authorizing agent is
not of the
decedent's estate,

(B)

(9)

q. Regarding s. 440.80 (1)(c),
s. 440.80 (1)(c), I

still don't understand when the decedent's
estate is liable and when the authorizing
agent is liable. Please explain.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2804/P2dn
PG:cjs:rs

February 28, 2002

1. Please note the change to s.157.62 (3) (b) 1m. and the creation of s. 440.80 (5). Do these modifications adequately address your concerns?
2. In s. 440.70 (4), I changed "resulting" to "recovered," but did not remove "all." Shouldn't "cremated remains" refer to all the human remains recovered from cremation?
3. In s. 440.71 (2), if a person submits an application and pays the fee, DRL will have no authority to deny registration. OK?
4. In s. 440.72 (1), the term "surviving" is used in pars. (b), (c), and (d), but not in par. (a). Is it needed in par. (a)? Or should it be deleted from the other paragraphs (because, for example, a dead child cannot authorize cremation)?
5. I don't understand your response to the NOTE following page 7, line 15, of the previous draft. Please explain. Note that s. 440.72 (3) has been revised. Is it OK now? In par. (a) of that subsection, who would determine whether there is "evidence that cremation was contrary" to the decedent's religious beliefs?
6. In s. 440.74 (intro.), I added "facsimile or other electronic means," as you requested, but now wonder whether you also need it in ss. 440.72 (1) (b), (c), and (d) and (3) (b), 440.76, 440.78 (3) (b) and (5), and 440.80 (3) (intro.). If you include the language in only one place, the clear implication is that electronic transmission is not allowed in others. Is that your intent? If not, I advise deleting it everywhere.
7. I did not understand your response to the question in the NOTE following s. 440.76. Do you mean the section is OK as is?
8. In s. 440.78 (3) (c), I did not use "alternative container" because it is unnecessary. The industry is still free to use the term in its marketing efforts.
9. Regarding s. 440.80 (1) (c), assuming that the authorizing agent is not the decedent's estate, I still don't understand when the decedent's estate is liable and when the authorizing agent is liable. Please explain.
10. Because "land, sea, and air" covers all areas of the planet, including "scattering areas" (areas described in s. 440.80 (2) (b)), I did not specify that the prohibition in s. 440.80 (3) (a) does not apply to scattering on land, sea, or air. The resulting provision would be meaningless.

11. In s. 440.80 (4) (a), I removed "nonorganic material" because "material" should cover all material, both organic and inorganic.

12. I don't understand your response to the NOTE that followed s. 440.80 (4) (b). If, as the Board believes, there is no other law that explicitly governs the disposal of prosthetic or medical devices, it would make no sense to require that they be disposed of "in a lawful manner." If there is a law governing disposal, then it isn't necessary for this bill to require compliance with that law.

13. Regarding your N.B.: s. 440.71 (1) has been modified as a result of e-mail from Myra Shelton on January 10. Is it OK now?

14. In Myra's e-mail, she asked that the draft require the department secretary to create a committee under s. 15.04 (1) (c). I did not include that in the draft because it is unnecessary; the secretary may create a committee under s. 15.04 (1) (c) unilaterally without such a provision. If you want a permanent council, let me know and I'll create one under s. 15.407.

Peter R. Grant
Managing Attorney
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Beam, Laura

To: Shelton, Myra

Subject: Draft review: LRB-2804/P2 Topic: Cremation of human remains (funeral directors examining board request)

Following is the PDF version of draft LRB-2804/P2 and drafter's note.

Sent
03-01-02
Via e-mail

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2804/P2dn

PG:cjs:rs

MDK

February 28, 2002

- ✓ 1. Please note the change to s. 157.62 (3) (b) 1m. and the creation of s. 440.80 (5). Do these modifications adequately address your concerns? *add*
- ✓ 2. In s. 440.70 (4), I changed "resulting" to "recovered," but did not remove "all." Shouldn't "cremated remains" refer to all the human remains recovered from cremation?
- ✓ 3. In s. 440.71 (2), if a person submits an application and pays the fee, DRL will have no authority to deny registration. OK? *yes*
- ✓ 4. In s. 440.72 (1), the term "surviving" is used in pars. (b), (c), and (d), but not in par. (a). Is it needed in par. (a)? Or should it be deleted from the other paragraphs (because, for example, a dead child cannot authorize cremation)?
- ✓ 5. I don't understand your response to the NOTE following page 7, line 15, of the previous draft. Please explain. Note that s. 440.72 (3) has been revised. Is it OK now? *yes*
In par. (a) of that subsection, who would determine whether there is "evidence that cremation was contrary" to the decedent's religious beliefs? *see D*
- ✓ 6. In s. 440.74 (intro.), I added "facsimile or other electronic means," as you requested, but now wonder whether you also need it in ss. 440.72 (1) (b), (c), and (d) and (3) ~~and~~, 440.76, 440.78 (3) (b) and (5), and 440.80 (3) (intro.). If you include the language in only one place, the clear implication is that electronic transmission is not allowed in others. Is that your intent? If not, I advise deleting it everywhere. *part in all plus intro*
- ✓ 7. I did not understand your response to the question in the NOTE following s. 440.76. Do you mean the section is OK as is? *only FAX*
- ✓ 8. In s. 440.78 (3) (c), I did not use "alternative container" because it is unnecessary. The industry is still free to use the term in its marketing efforts.
- ✓ 9. Regarding s. 440.80 (1) (c), assuming that the authorizing agent is not the decedent's estate, I still don't understand when the decedent's estate is liable and when the authorizing agent is liable. Please explain.
- ✓ 10. Because "land, sea, and air" covers all areas of the planet, including "scattering areas" (areas described in s. 440.80 (2) (b)), I did not specify that the prohibition in s. 440.80 (3) (a) does not apply to scattering on land, sea, or air. The resulting provision would be meaningless. *delete (b)*

- ✓ 11. In s. 440.80 (4) (a), I removed "nonorganic material" because "material" should cover all material, both organic and inorganic.
- ✓ 12. I don't understand your response to the NOTE that followed s. 440.80 (4) (b). If, as the Board believes, there is no other law that explicitly governs the disposal of prosthetic or medical devices, it would make no sense to require that they be disposed of "in a lawful manner." If there is a law governing disposal, then it isn't necessary for this bill to require compliance with that law.
- ✓ 13. Regarding your N.B.: s. 440.71 (1) has been modified as a result of e-mail from Myra Shelton on January 10. Is it OK now?
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