



State of Wisconsin  
2001 - 2002 LEGISLATURE

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BY  
THURSDAY  
A.M.

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P3

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAV

inserts

rephrases

creating a  
crematory  
authority  
council

1 AN ACT to amend 157.62 (4); and to create 157.62 (3) (b) 1m., 440.08 (2) (a) 24m.  
 2 and subchapter IV of chapter 440 [precedes 440.70] of the statutes; relating  
 3 to: regulating the cremation of human remains, granting rule-making  
 4 authority, and providing penalties.

**Analysis by the Legislative Reference Bureau**

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

For further information see the *state* 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:**

5 SECTION 1. 157.62 (3) (b) 1m. of the statutes is created to read:  
 6 157.62 (3) (b) 1m. Records required under s. 440.80 (5).  
 7 SECTION 2. 157.62 (4) of the statutes is amended to read:  
 8 157.62 (4) RECORDS MAINTENANCE. The records under sub. (3) (b) 1. and 1m.  
 9 shall be permanently maintained by the cemetery authority or licensee. Each record

1 under sub. (3) (b) 2. shall be maintained for not less than 3 years after the date of the  
2 deposit. Each copy of a contract under sub. (3) (b) 3. shall be maintained for not less  
3 than 3 years after all of the obligations of the contract have been fulfilled. The  
4 department may promulgate rules to establish longer time periods for maintaining  
5 records under sub. (3) (b) 2. and 3.

6 **SECTION 3.** 440.08 (2) (a) 24m. of the statutes is created to read:

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

9 **SECTION 4.** Subchapter VI of chapter 440 [precedes 440.70] of the statutes is  
10 created to read:

11 **CHAPTER 440**

12 **SUBCHAPTER VI**

13 **CREMATORY AUTHORITIES**

14 **440.70 Definitions.** As used in this subchapter:

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

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

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

19 (3m) "Columbarium" means a building, structure, or part of a building or  
20 structure that is used or intended to be used for the inurnment of cremated remains.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24           2. The address of the crematory.

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

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

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

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

11           (a) The decedent's <sup>surviving</sup> spouse ~~at the time of the decedent's death.~~ ✓

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

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

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

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

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

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

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

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

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

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

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

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

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

8           **440.73 Authorization forms.** An authorizing agent may direct the cremation  
9 of the human remains of a decedent only by completing a form that includes all of the  
10 following:

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

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

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

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

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

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

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

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

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

9 **440.74 Delegation of authority.** An authorizing agent may, in writing,  
10 delegate the authority to direct the cremation of the human remains of a decedent  
11 to another individual. ~~The delegation may be transmitted by facsimile or other~~  
12 ~~electronic means.~~ The delegation shall include all of the following: ✓

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

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

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

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

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

4           (a) The name of the decedent.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (a) The name of the decedent.

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

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

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

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

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

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

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

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

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

~~(b) Scattering the remains in an area in which the scattering of cremated remains is lawful.~~

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

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

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

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

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

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

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

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

11 **440.81 Records.** (1) A crematory authority shall maintain a permanent  
12 record of each cremation at its place of business consisting of the name of the  
13 decedent, the date of the cremation, and a description of the manner in which the  
14 cremated remains are disposed.

15 (2) A crematory authority shall maintain as permanent records the  
16 documentation specified in s. 440.78 (1) and copies of receipts under ss. 440.77 (1)  
17 and 440.79. ✓

18 **440.82 Exemptions from liability.** (1) Except as provided in sub. (2), a  
19 crematory authority is immune from civil liability for damages resulting from  
20 cremating human remains, including damages to prosthetic or medical devices or  
21 valuables of the decedent, if the authority has complied with the requirements of this  
22 subchapter.

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

INS.  
13-24 →

1           **440.83 Rules.** The department may promulgate rules interpreting or  
2 administering the requirements of this subchapter.

3           **440.84 Discipline.** (1) Subject to the rules promulgated under s. 440.03 (1),  
4 the department may make investigations or conduct hearings to determine whether  
5 a violation of this subchapter or any rule promulgated under this subchapter has  
6 occurred.

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

11           (a) Made a material misstatement in an application for a registration or  
12 renewal of a registration.

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

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

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

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

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

21           **440.85 Penalties.** (1) Any individual who violates this subchapter or rule  
22 promulgated under this subchapter may be fined not more than \$1,000 or imprisoned  
23 for not more than 6 months or both.

24           (2) In addition to or in lieu of the penalties under sub. (1) and the remedies  
25 under s. 440.84 (2), an individual who violates this subchapter or any rule

1 promulgated under this subchapter may be required to forfeit not more than \$1,000  
2 for each separate violation. Each day of continued violation constitutes a separate  
3 violation.

15-3



4 **SECTION 5. Effective date.**

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

7 (END)

2-5

¶ SEC. CR. 15.407 (7) ✓

¶ 15.407 (7) <sup>(B)</sup> CREMATORY AUTHORITY COUNCIL. <sup>(C)</sup> There

is created a crematory authority council in the department of regulation and licensing consisting of the secretary of regulation and

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

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

¶ (b) Three ~~persons~~ <sup>representatives of crematory authorities,</sup> (who ~~are~~ <sup>operate</sup>) as defined in s. 157.061(2). ✓

¶ (c) One public member.



13-24

¶ 440-825 Electronic transmission permitted.

~~Any statement or notice required~~ <sup>authorized</sup> ~~under~~  
required to be in writing ~~under~~  
under ~~this~~ ~~subchapter~~ may be transmitted by  
facsimile ~~or other electronic means~~

s. 440.72 (1) ~~and~~ (3), 440.74, 440.76,  
440.78 (3) (b) ~~and~~ (5), or 440.80 (3)

or

15-3:1

(2)

Nonstatutory provisions.

SEC. #. ~~NONSTATUTORY~~ PROVISIONS. Notwithstanding  
15.405 (7) lower case =

section 15.405 (7) of the statutes, as  
(crematory authority) initial  
created by this act, one of the (members of  
the council crematory authority)

appointed under section 15.407 (7)(a) of the  
statutes and one of the (members appointed  
initial of the council  
15.407

under section 15.407 (7)(b) of the statutes  
shall be appointed for initial terms that

expire on July 1, 2004, one of the initial  
members of the (crematory authority  
council appointed under ~~the~~ section  
15.407 (7)(a)

15.407 (7)(a) of the statutes, ~~and~~ one of the initial  
members of the (crematory authority  
council appointed under section

15.407 (7)(b) of the statutes, and ~~the~~ the initial  
public member shall be appointed ~~under~~

~~section 15.40~~ for initial terms that expire  
initial  
on July 1, 2005, and the other 2 members

2001-2002

crematory  
authority

15-3-2

11015101

of the council shall be appointed for  
expire  
Terms that expire on July 1, 2008.

3/15

IC from Erni, Funeral Services At Home

delete p. 9 l 13 per. DHS

says illegal to make copy of  
death certificate -

PG

IC from Deb Hanson, DRL

add "who operate cemeteries"

p. 2 l. 3



State of Wisconsin  
2001 - 2002 LEGISLATURE

Monday PM

LRB-2804/P3  
MDK&PG:cjs:kjf

PH  
/P4

SA✓

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

P. 9  
P. 2

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2 [precedes 440.70] of the statutes; relating to: regulating the cremation of  
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*Analysis by the Legislative Reference Bureau*

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

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

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

4 (c) One public member.

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

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11 **SUBCHAPTER VI**

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*, who operates  
crematories  
crematories*

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

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

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

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

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

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

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

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

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

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

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

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

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

24           2. The address of the crematory.

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

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

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

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

11           (a) The decedent's surviving spouse.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4           (a) The name of the decedent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14           **(b)** ~~to~~ A copy of the cremation permit issued under s. 979.10 (1) (a). ✓

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (a) The name of the decedent.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

20          **440.825 Electronic transmission permitted.** Any statement required to be  
21 in writing under s. 440.72 (1) or (3), 440.74, 440.76, 440.78 (3) (b) or (5), or 440.80 (3)  
22 may be transmitted by facsimile.

23          **440.83 Rules.** The department may promulgate rules interpreting or  
24 administering the requirements of this subchapter.

1           **440.84 Discipline.** (1) Subject to the rules promulgated under s. 440.03 (1),  
2 the department may make investigations or conduct hearings to determine whether  
3 a violation of this subchapter or any rule promulgated under this subchapter has  
4 occurred.

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

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

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

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

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

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

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

19           **440.85 Penalties.** (1) Any individual who violates this subchapter or rule  
20 promulgated under this subchapter may be fined not more than \$1,000 or imprisoned  
21 for not more than 6 months or both.

22           (2) In addition to or in lieu of the penalties under sub. (1) and the remedies  
23 under s. 440.84 (2), an individual who violates this subchapter or any rule  
24 promulgated under this subchapter may be required to forfeit not more than \$1,000

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

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

14 **SECTION 5. Effective date.**

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

17

(END)



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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

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***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.

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

5             **SECTION 1.** 15.407 (7) of the statutes is created to read:  
6             15.407 (7) **CREMATORY AUTHORITY COUNCIL.** There is created a crematory  
7             authority council in the department of regulation and licensing consisting of the  
8             secretary of regulation and licensing or a designee of the secretary, who shall serve  
9             as a nonvoting member, and the following persons appointed for 3-year terms:

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

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

5 (c) One public member.

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

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

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

## 11 **CHAPTER 440**

### 12 **SUBCHAPTER VI**

#### 13 **CREMATORY AUTHORITIES**

14 **440.70 Definitions.** As used in this subchapter:

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

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

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

19 (3m) "Columbarium" means a building, structure, or part of a building or  
20 structure that is used or intended to be used for the inurnment of cremated remains.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24           2. The address of the crematory.

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

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

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

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

11           (a) The decedent's surviving spouse.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4           (a) The name of the decedent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19           (a) The name of the decedent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20          **440.825 Electronic transmission permitted.** Any statement required to be  
21 in writing under s. 440.72 (1) or (3), 440.74, 440.76, 440.78 (3) (b) or (5), or 440.80 (3)  
22 may be transmitted by facsimile.

23          **440.83 Rules.** The department may promulgate rules interpreting or  
24 administering the requirements of this subchapter.



1           **440.84 Discipline.** (1) Subject to the rules promulgated under s. 440.03 (1),  
2 the department may make investigations or conduct hearings to determine whether  
3 a violation of this subchapter or any rule promulgated under this subchapter has  
4 occurred.

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

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

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

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

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

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

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

19           **440.85 Penalties.** (1) Any individual who violates this subchapter or rule  
20 promulgated under this subchapter may be fined not more than \$1,000 or imprisoned  
21 for not more than 6 months or both.

22           (2) In addition to or in lieu of the penalties under sub. (1) and the remedies  
23 under s. 440.84 (2), an individual who violates this subchapter or any rule  
24 promulgated under this subchapter may be required to forfeit not more than \$1,000

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

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

14 **SECTION 5. Effective date.**

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

17 (END)