

Clearinghouse Rule 19-161

STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : FUNERAL DIRECTORS
FUNERAL DIRECTORS : EXAMINING BOARD
EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Funeral Directors Examining Board to repeal FD 6.09 (5), and to amend FD 6.07 (11), relating to burial agreements funded with life insurance.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 445.125 (3m) (h) and (j), Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) (a), and 445.125 (3m) (j), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., “[e]ach examining board...Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 227.11 (2) (a), Stats., “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute..”

Section 445.125 (3m) (j) 1. d., Stats., “The examining board shall promulgate rules establishing all of the following...[t]he form and content of written notice that a licensed funeral director, operator of a funeral establishment or agent of a licensed funeral director or operator of a funeral establishment is required to provide to the examining board under par. (h).”

Related statute or rule: None.

Plain language analysis:

This rule project removes the requirement that a funeral director, licensed intermediary, or operator of a funeral establishment include the value of the trust when submitting notice to the board that a burial trust is being terminated and replaced with a life insurance policy. It also corrects obsolete contact information for the board.

Summary of, and comparison with, existing or proposed federal regulation:

While the Federal Trade Commission (FTC) does regulate the sale of funeral goods and services, the “funeral rule” does not speak to the issue of the termination of burial trusts or the funding of burial agreements with life insurance.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:

The Funeral Directors Examining Board held a preliminary hearing on the statement of scope at its August 27, 2019 meeting. No comments were received.

Comparison with rules in adjacent states:

Illinois: Illinois requires the seller of the pre-need contract to notify the State Comptroller if the trustee of the fund is being changed (225 ILCS 45/2 (g)). Illinois law does not explicitly require the seller of a burial agreement to notify the board when a burial trust is terminated and replaced with a life insurance policy.

Iowa: Iowa does not require the seller of a burial agreement to notify the board when a burial trust is terminated and replaced with a life insurance policy, but the consumer must consent to this change, and the seller must retain a record of the original trust agreement (Iowa Stats. s. 523A.401 (6)).

Michigan: Michigan requires the seller to provide notice to the consumer when a prepaid burial contract is transferred or assigned (MCL 328.223 (6)). The required content of the notice is not enumerated in rule or statute, nor does it appear that notice must be provided to the Michigan Department of Licensing and Regulatory Affairs.

Minnesota: Minnesota law does not specify a procedure for the termination of a burial trust and replacement with a life insurance policy.

Summary of factual data and analytical methodologies:

As a result of the board’s review of its rules under s. 227.29, Stats., the board determined that the requirement to include the value of the trust in the notice of termination was economically burdensome. The board also determined that the contact information for the board included in s. FD 6.07 (11) was obsolete. This rule project will revise the FD rules to resolve these issues.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The rule was posted on the department's website for 14 days to solicit economic impact comments. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis are attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-2660-0955; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the hearing scheduled for 9:30 AM on January 22, 2020 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. FD 6.07 (11) is amended to read:

(11) The following statement in not less than 12-point boldface type: **"Burial agreements are regulated by the Wisconsin Funeral Directors Examining Board. Should you have a complaint, please contact the Board at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708 or by telephone at (608) 266-5511."**

SECTION 2. FD 6.09 (5) is repealed.

SECTION 3. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)
