

# State of Wisconsin



2005 Assembly Bill 75

Date of enactment: **August 15, 2005**  
Date of publication\*: **August 29, 2005**

## 2005 WISCONSIN ACT 31

AN ACT *to amend* 157.055 (2) (intro.); and *to create* 15.407 (8), 440.08 (2) (a) 24m. and subchapter VI of chapter 440 [precedes 440.70] of the statutes; **relating to:** regulating the cremation of human remains, creating a Crematory Authority Council, granting rule-making authority, and providing penalties.

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

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

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

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

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

(c) One public member.

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

157.055 (2) (intro.) Notwithstanding ss. 69.18 (4), 445.04 (2), 445.14, 979.01 (3), (3m), and (4), 979.02, and 979.10, and subch. VI of ch. 440, during a period of a state of emergency related to public health declared by the governor under s. 166.03 (1) (b) 1., a public health authority may do all of the following:

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

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

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

### CHAPTER 440

#### SUBCHAPTER VI

#### CREMATORY AUTHORITIES

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

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

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

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

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

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

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

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

\* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(9) "Crematory authority" means a person who owns or operates a crematory.

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

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

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

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

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

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

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

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

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

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

2. The address of the crematory.

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

4. Any other information that the department may require.

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

**440.73 Authorization forms.** A person who is authorized to direct the cremation of the human remains of a decedent may do so only by completing a form that includes all of the following:

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

(2) The name of the person directing the cremation and his or her relationship to the decedent.

(3) A statement that the person directing the cremation has the authority to direct the cremation.

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

(5) The name of the funeral director, funeral establishment, or cemetery that the person directing the cremation authorizes to receive the cremated remains or, if alternative arrangements are made for receiving the cremated remains, a description of those arrangements.

(6) If known by the person directing the cremation, the manner in which the cremated remains are to be disposed.

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

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

(9) The signature of the person directing the cremation attesting to the accuracy of the representations contained on the form.

**440.75 Liability of a person who directs the cremation of human remains.** A person who directs the cremation of human remains is liable for damages resulting from authorizing the cremation of the human remains of a decedent.

**440.76 Revocation of authorization.** Before a cremation is performed, a person directing the cremation of human remains may cancel the cremation by providing the crematory authority with a written statement revoking the authorization form. A person who revokes an authorization form shall provide the crematory authority with written instructions regarding the final disposition of the human remains.

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

(a) The name of the decedent.

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

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

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

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

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

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

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

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

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

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

3. The crematory authority has reason to believe that a representation of the person directing the cremation of human remains is not true.

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

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

(a) A completed authorization form.

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

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

(2) HOLDING FACILITY. (a) Upon accepting delivery of human remains, a crematory authority shall place the human remains in a holding facility until they are cremated, except that, if the crematory authority obtains knowledge of a dispute regarding the cremation of the human remains, the 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.

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

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

(b) Unless a crematory authority obtains the prior written consent of the person directing the cremation, and except as provided in par. (c), a crematory authority shall cremate with human remains the casket or other container holding the human remains or destroy the casket or other container.

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

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

(5) SIMULTANEOUS CREMATION. A crematory authority may not simultaneously cremate the human remains of more than one decedent within the same cremation chamber unless the crematory authority receives the prior written consent of the person directing the cremation of each decedent.

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

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

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

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

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

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

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

(a) The name of the decedent.

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

(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, with which the person is affiliated.

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

**440.80 Disposition of cremated remains.** (1) RESPONSIBLE PARTY. (a) Except as provided in par. (b), the person directing the cremation is responsible for determining the manner in which cremated remains are disposed.

(b) If the person directing the cremation fails to determine the manner in which cremated remains are dis-

posed, 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 cremated 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 cremated remains are disposed and shall make a written record of any determination that is made.

(c) The person directing the cremation or the decedent's estate, or both, are 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) 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 person directing the cremation, no person may place cremated remains of more than one individual in the same container.

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

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

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

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

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

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

(2) A crematory authority is liable for damages resulting from the authority's intentional misconduct, negligent conduct, or failure to return valuables specified on an authorization form under s. 440.73 (7).

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

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

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

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

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

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

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

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

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

(f) Violated this subchapter or a rule promulgated under this subchapter.

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

(2) In addition to or in lieu of the penalties under sub. (1) and the remedies under s. 440.85 (2), any person who violates this subchapter or a rule promulgated under this subchapter may be required to forfeit not more than \$1,000 for each violation. Each day of continued violation constitutes a separate violation.

**440.87 Exceptions.** This subchapter does not apply to a person who is performing his or her duties as an officer of a public institution, medical school, medical college, county medical society, anatomical association, or accredited college of embalming, or to a person acting in accordance with a statute prescribing the conditions under which donated or indigent dead human bodies are held subject for anatomical study, or to a person who is acting according to the burial customs or rites of a religious sect to which the person belongs or subscribes.

**SECTION 5. Nonstatutory provisions.** Notwithstanding section 15.407 (8) (intro.) of the statutes, as created by this act, one of the initial terms of the members of the crematory authority council appointed under section 15.407 (8) (a) of the statutes, as created by this act, and one of the initial terms of the members of the crema-

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tory authority council appointed under section 15.407 (8) (b) of the statutes, as created by this act, shall expire on July 1, 2008; one of the initial terms of the members of the crematory authority council appointed under section 15.407 (8) (a) of the statutes, as created by this act, one of the initial terms of the members of the crematory authority council appointed under section 15.407 (8) (b) of the statutes, as created by this act, and the initial term

of the public member of the crematory authority council appointed under section 15.407 (8) (c) of the statutes, as created by this act, shall expire on July 1, 2009; and the other 2 initial terms of the members of the crematory authority council shall expire on July 1, 2010.

**SECTION 6. Effective date.**

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

