

Notice of Hearing

The Funeral Directors Examining Board announces that it will hold a public hearing on a permanent rule FD 1 relating to Funeral Director License Application Requirements at the time and place shown below.

Hearing Information

Date: November 17, 2020

Time: 9:30 AM

Location: Virtual Hearing

Connection information will be posted in advance of the hearing at the following webpage:
<https://dsps.wi.gov/Pages/RulesStatutes/PublicHearingComments.aspx>

Appearances at the Hearing and Submittal of Written Comments

Comments may be submitted to Kevyn Radcliffe, 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 November 17, 2020 to be included in the record of rule-making proceedings.

The rule may be reviewed and comments made at:
<http://docs.legis.wisconsin.gov/code/chr/hearings>.

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).

Agency Small Business Regulatory Coordinator

Daniel Hereth, Daniel.Hereth@wisconsin.gov, (608) 267-2435

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 TBD)

PROPOSED ORDER

An order of the Funeral Directors Examining Board to amend FD 1.06 (6) and 1.12 (title); and to create FD 1.015 and 1.13; relating to funeral director license application requirements.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Sections 111.321, 111.322, 111.335, and 440.09 (2), Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) (a), 440.09 (2), and 445.03 (2) Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., “[e]ach examining board...[s]hall 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 440.09 (2), Stats., “[t]he department and each credentialing board shall grant a reciprocal credential to an individual who the department or credentialing board determines meets all of the following requirements:

- (a) The individual applies for a reciprocal credential under this section on a form prescribed by the department or credentialing board.
- (b) The individual is a service member, a former service member, or the spouse of a service member or former service member and resides in this state.
- (c) The individual holds a license, certification, registration, or permit that was granted by a governmental authority in a jurisdiction outside this state that qualifies the individual to perform the acts authorized under the appropriate credential granted by the department or credentialing board.

(d) The individual pays the fee specified under s. 440.05 (2).

(f) The individual is in good standing with the governmental authorities in every jurisdiction outside this state that have granted the individual a license, certification, registration, or permit that qualifies the individual to perform acts authorized under the appropriate credential granted by the department or credentialing board.

Section 440.09 (5), Stats., allows the board to promulgate rules necessary to implement the changes to 440.09 (2) enacted by 2019 Wisconsin Act 143.

Section 445.03 (2), Stats., “[t]he examining board may: (a) Make and enforce rules not inconsistent with this chapter establishing professional and business ethics for the profession of funeral directors and for the general conduct of the business of funeral directing, and for the examining and licensing of funeral directors and the registration of apprentices.”

Related statute or rule: Sections 445.04 and 445.045, Stats. provide the statutorily required criteria for a funeral director license application.

Plain language analysis:

This rule project updates FD 1 to implement 2019 Wisconsin Act 143. Act 143 requires the board to grant a reciprocal credential to an applicant who meets the following criteria:

- Completes an application.
- Pays the required application fee.
- Resides in the state.
- Is either a service member, former service member discharged other than dishonorably within the last four years, or spouse of a service member or former service member discharged other than dishonorably within the last four years.
- Holds a credential in another jurisdiction that qualifies the individual to perform the acts authorized under the appropriate credential granted by the department or credentialing board.

The rule project also revises FD 1 to implement 2017 Wisconsin Act 278. FD 1.02 (6) is revised to clarify that an applicant must submit documentation necessary for the board determine whether the applicant has certain pending charges (not simply an arrest record) or convictions that are substantially related to the practice of the profession of funeral directing.

Summary of, and comparison with, existing or proposed federal regulation: None.

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: N/A.

Comparison with rules in adjacent states:

Illinois:

Illinois state law does have a process allowing for expedited issuance of reciprocal credentials for active service members, their spouses, and those who were discharged from the service within the last two years. An applicant must show that they have a credential in good standing in another jurisdiction that is substantially equivalent to the Illinois credential sought, and must submit all required fees and application documents. The credential must be issued within 60 days of receipt of a completed application (20 ILCS 5/5-715).

Illinois allows its credentialing authority to deny or refuse to renew a funeral director license if the applicant is convicted or pleads guilty or no contest to a felony directly related to the practice of funeral directing. Felonies directly related to the practice of funeral directing include but are not limited to most violent crimes, sex crimes, and crimes relating fraud; as well as attempting to commit any of these felonies. Mitigating factors including the applicant's age when the crime was committed, time elapsed since the conviction, and consideration of the actual bearing of the crime on the ability of the applicant to practice. Discrimination based on arrest or on a pending charge does not appear to be permissible (225 ILCS 41/15-72).

Iowa:

Iowa requires the board to expedite reciprocal license applications for veterans as defined under Iowa law, as long as the board determines the individual is licensed in another jurisdiction and the requirements to obtain that license are substantially equivalent to the requirements to obtain the license in Iowa. If the requirements are not substantially equivalent, the applicant may receive a provisional license to allow practice while meeting remaining requirements for equivalency (IA Stats. § 272C.4 (12)).

Iowa law allows for the revocation or suspension of a funeral director license if the following is true: "Conviction of any crime related to the practice of mortuary science or implicating the licensee's competence to safely perform mortuary science services, including but not limited to a crime involving moral character, dishonesty, fraud, theft, embezzlement, extortion, or controlled substances, in a court of competent jurisdiction in this state, or in another state, territory, or district of the United States, or in a foreign jurisdiction. For purposes of this paragraph, "conviction" includes a guilty plea, deferred judgment, or other finding of guilt. A certified copy of the judgment is prima facie evidence of the conviction" (IA Stats. § 156.9 (e)).

Michigan:

Michigan provides for a temporary credential to be issued to active duty military and spouses if they hold a credential in another state in good standing that allows for the practice of the profession they are seeking licensure for. This temporary credential is good for at least 6 months and can be extended if the person needs more time to meet licensing requirements (MI Stats. § 339.213).

Individuals licensed as funeral directors in Michigan must be “of good moral character.” (MCL § 339.1806 (1) (d)). The agency may consider a judgment of guilt in a criminal prosecution or a judgment in a civil action in determining whether an individual is of good moral character. The individual can provide evidence showing that they are of good moral character to rebut a previous criminal or civil judgment (MCL § 338.42).

Minnesota:

Minnesota allows licensing agencies to refuse to credential an individual based on criminal history only if the individual was convicted of the crime, and the crime directly relates to the occupation for which the license is sought (Minn. Stats. § 364.03 (1)).

Generally, Minnesota does require each licensing board to promulgate rules allowing for expedited temporary credentials to be issued to service members, former service members discharged in the last two years, and their spouses. Applicants must show a valid credential issued by another jurisdiction, without history of disciplinary action, and must pass a background check. The applicant must complete all application requirements during the life of the temporary credential (Minn. Stats. § 197.4552).

Summary of factual data and analytical methodologies:

The board considered the necessity of implementing the statutory changes created by 2017 Act 278 and 2019 Act 143 in drafting this rule, and made the revisions to its rules necessary to implement these legislative changes.

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

The rule will be posted on the department’s website for 14 days to solicit information from the public on the possible economic impact of the proposed rule.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis will be attached upon completion.

Effect on small business:

The board is currently soliciting economic impact information from the public and will update this section upon the conclusion of the 14 day solicitation period.

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 608-266-0955; 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 public hearing to be held at 9:30 AM on November 17, 2020 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. FD 1.015 is created to read:

FD 1.015 Definitions; this chapter. As used in this chapter:

- (1) “Former service member” has the meaning provided in s. 440.09 (1) (a), Stats.
- (2) “Service member” has the meaning provided in s. 440.09 (1) (b), Stats.
- (3) “Spouse” has the meaning provided in s. 440.09 (1) (c), Stats.

SECTION 2. FD 1.06 (6) is amended to read:

FD 1.06 (6) If the applicant has ~~an arrest~~ a pending charge or conviction record, all documentation necessary for the board to determine whether the circumstances substantially relate to the practice of funeral director, subject to ss. 111.321, 111.322, and 111.335, Stats.

SECTION 3. FD 1.12 (title) is amended to read:

FD 1.12 General Reciprocity.

SECTION 4. FD 1.13 is created to read:

FD 1.13 Reciprocity for Servicemembers, Former Servicemembers, and Spouses of Servicemembers or Former Servicemembers. A funeral director’s license shall be granted to a servicemember, former servicemember, or spouse of a servicemember or former servicemember who the board determines meets all of the requirements under s. 440.09 (2), Stats. Subject to s. 440.09 (2m), Stats., the board may request verification necessary to make a determination under this section.

SECTION 5. 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)

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date September 11, 2020</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) FD 1</p>	
<p>4. Subject Funeral Director License Application Requirements</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected 20.165(1)(g)</p>
<p>7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule The rule project is necessary to implement 2019 Wisconsin Act 143 regarding a process for service members, former service members, and their spouses to obtain a reciprocal credential. The rule is also necessary to revise the board's rules to bring them into alignment with 2017 Wisconsin Act 278. The rules are clarified to state that an applicant is required to submit a record of pending charges against the applicant, not their arrest record generally.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The proposed rule was posted on the department's website for 14 days to solicit economic impact comments from these groups. No comments were received.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. No governmental units participated in the development of the EIA.</p>	
<p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) This proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole.</p>	
<p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit of implementing the rule is that the board's rules will conform with state law and provide clarity to stakeholders. It will also assist our veterans, active duty service members, and their spouses in obtaining credentials that they need to work in Wisconsin. The alternative is to not implement the rule and leave a disparity between state statute and the board's rules, resulting in stakeholder confusion.</p>	
<p>16. Long Range Implications of Implementing the Rule The long range implication of implementing the rule is that stakeholders will have greater clarity as to what the application requirements are for obtaining a reciprocal credential, and applying for a funeral director's license generally.</p>	
<p>17. Compare With Approaches Being Used by Federal Government</p>	

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

None.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois:

Illinois state law does have a process allowing for expedited issuance of reciprocal credentials for active service members, their spouses, and those who were discharged from the service within the last two years. An applicant must show that they have a credential in good standing in another jurisdiction that is substantially equivalent to the Illinois credential sought, and must submit all required fees and application documents. The credential must be issued within 60 days of receipt of a completed application (20 ILCS 5/5-715).

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ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

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19. Contact Name Jon Derenne, Administrative Rules Coordinator	20. Contact Phone Number (608) 266-0955
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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-