

**STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD**

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
FUNERAL DIRECTORS EXAMINING : CLEARINGHOUSE RULE 18-075
BOARD :**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

These rule revisions would not require use of any new or revised forms.

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

This rule amends the funeral director apprenticeship requirements and makes them consistent with changes provided in 2017 Wisconsin Act 304.

This rule requires an applicant for a funeral director's license to complete a 16-hour certification class rather than completing one year of college work or equivalent education in addition to completing the required nine months of instruction in mortuary science. The rule provides the required instructional content for the class and provides for a class exam as well as an exam passing standard.

This rule allows the Board to recognize two funeral director apprentices for each funeral establishment and also recognize additional funeral director apprentices as long as the funeral home employs at least one full-time licensed funeral director per funeral director apprentice.

This rule specifies that when an apprentice is in the preparation room the apprentice must be within the supervising funeral director's line of sight.

This rule establishes that the Board must continue an apprenticeship for another four-year term after the registration or extension expires if the apprentice successfully retakes the 16-hour, Board approved, certification class.

Finally, this rule requires that apprentices applying for funeral director licensure must present affidavits from the licensed funeral directors under whom the apprentice worked to verify that the apprentice completed the practical apprenticeship work requirements.

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD’S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Board held a public hearing on November 27, 2018. The following people either testified at the hearing, or submitted written comments:

Gabriel Schauf, Instructor at Milwaukee Area Technical College

Erin Longmire, Executive Director of the Funeral Service & Cremation Alliance of Wisconsin

The Board summarizes the comments received either by hearing testimony or by written submission as follows:

Mr. Schauf pointed out that the narrative in the draft’s plain language analysis section was confusing and seemed to indicate the mortuary course was required to be taken after the 16-credit course.

Ms. Longmire inquired about s. FD 1.075 (3) and whether less restrictive language could be used to allow apprentices in a preparation room at certain times without being in the line-of-sight of a funeral director.

The Board explains modifications to its rule-making proposal prompted by public comments as follows:

This plain language analysis narrative issue raised by Mr. Schauf was updated to eliminate the confusion regarding the mortuary class.

With respect to comments by Ms. Longmire regarding s. FD 1.075 (3) of the draft, the Board reviewed s. 445.095 (2) (b) of the statutes and concluded the rule was consistent with statutory language.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment: Two statutory references should be made more specific.

Response: Both citations made more specific.

Comment: Defining the term “applicant” is unnecessary.

Response: Definition of “applicant” was removed.

Comment: The Clearinghouse states that the “American Board of Funeral Service Education” should not be capitalized.

Response: Although the Board agreed to concur with the Clearinghouse on this point, the ABFSE is a national accreditation agency and it would appear to be grammatically correct to capitalize the name of this agency.

Comment: The Clearinghouse recommended a stylistic language change in FD 1.076 (1) which they believe would be add language precision and clarity.

Response: Language modified per Clearinghouse suggestion.

Comment: The Clearinghouse suggested deleting the words, “retakes and” from s. FD 1.07 (2).

Response: The Board rejected this comment because s. FD 1.07 no longer exists. A later interpretation of this comment suggests the Clearinghouse likely meant to cite s. FD 1.076 (2). Nonetheless, because this was deemed a non-material suggestion, it will be left to any future rule update to consider this change.

Comment: The term, “Department” should not be capitalized in this instance.

Response: Change was implemented.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

This rule was not submitted to the Small Business Regulatory Review Board.

This rule does not have an economic impact on small businesses.

STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF RULE-MAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	FUNERAL DIRECTORS
FUNERAL DIRECTORS EXAMINING	:	EXAMINING BOARD
BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 18-075)

ORDER

An order of the Funeral Directors Examining Board to repeal FD 6.02 (2) and (3); to renumber FD 2.02 (3), (4), and 4.02 (1), (3); to amend FD 1.01, 1.02 (4), 1.02 (5), 1.05, and 1.08 (note); and to create FD 1.013 (intro.), 1.015 (intro.), 1.055, 1.056, 1.075 (3), 1.075 (4), 1.075 (5), 1.076, 1.077, and 3.015, relating to funeral director apprenticeship requirements.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Sections 445.095 and 445.10, Stats.

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

Explanation of board authority:

Section 15.08 (5) (b), Stats., states that each 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 445.03 (2) (a), Stats., allows the examining board to “[m]ake 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 examination and licensing of funeral directors and the registration of apprentices.”

Related statute or rule:

Wisconsin funeral director licensing and apprenticeship requirements are found in ch. 445, Stats., the administrative code in chs. FD 1 to 4 and FD 6, and DSPS administrative code chs. SPS 1 to 9, which outlines the administrative procedures for issuing licenses.

Plain language analysis:

This rule amends the funeral director apprenticeship requirements and makes them consistent with changes provided in 2017 Wisconsin Act 304.

This rule requires an applicant for a funeral director's license to complete a 16-hour certification class rather than completing one year of college work or equivalent education in addition to completing the required nine months of instruction in mortuary science. The rule provides the required instructional content for the class and provides for a class exam as well as an exam passing standard.

This rule allows the Board to recognize two funeral director apprentices for each funeral establishment and also recognize additional funeral director apprentices as long as the funeral home employs at least one full-time licensed funeral director per funeral director apprentice.

This rule specifies that when an apprentice is in the preparation room the apprentice must be within the supervising funeral director's line of sight.

This rule establishes that the Board must continue an apprenticeship for another four-year term after the registration or extension expires if the apprentice successfully retakes the 16-hour, Board approved, certification class.

Finally, this rule requires that apprentices applying for funeral director licensure must present affidavits from the licensed funeral directors under whom the apprentice worked to verify that the apprentice completed the practical apprenticeship work requirements.

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

Federal regulations do not govern requirements for funeral director apprentices.

Comparison with rules in adjacent states:

Illinois: Illinois requires 30 semester hours of college credit plus Mortuary College or associate or bachelor's degree in mortuary science. Illinois has a funeral director internship which is considered a one-year apprenticeship. Interns must complete at least 24 funerals, and at least 24 preparations and embalmings. The intern must submit a report for each of the 24 funerals and each 24 body preparations. Reports are filed every three months.

Iowa: Iowa requires a student to have a minimum of 60 semester hours as indicated on the transcript from a regionally accredited college or university with a minimum of 2.0 or "C" grade point and a course in mortuary science from a school accredited by the American Board of Funeral Service Education. The 60 semester hours does not include any technical or vocational mortuary science courses. Iowa has a one-year funeral director internship program. Interns must perform 25 embalmings and assist in 25 funerals. Interns must report to the state at 6 months and again at 12 months.

Michigan: Applicants in Michigan for mortuary science licenses are required to have completed not less than 60 semester hours or 90 quarter hours. Michigan's program allows for a resident trainee. A resident trainee must complete a list of requirements which includes 25 embalmings. A residency is for one year and can be renewed up to two times. Reporting is required on a six-month interval.

Minnesota: Minnesota requires a Bachelor of Science degree with a major in mortuary science received from an accredited school. Minnesota has an internship program. The internship can last between one and three years. A total of 25 embalming and 25 funerals must be completed which is documented upon completion.

Summary of factual data and analytical methodologies:

The Funeral Directors Examining Board consulted with representatives of the technical colleges, the Wisconsin Funeral Directors Examining Board, technical colleges, the Funeral Service & Cremation Alliance of Wisconsin and other stakeholder groups. No other factual data or analytical methodologies were used.

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

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document is 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, Nia Trammell, may be contacted by calling (608) 266-8608.

Agency contact person:

Helen Leong, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 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 Helen Leong, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708, or by email to DSPSAdminRules@wisconsin.gov.

TEXT OF RULE

Section 1. FD 1.01 is amended to read:

FD 1.01 Authority and intent. This chapter is adopted pursuant to authority of ss. 15.08 (5) (b), 227.11 (2) (a), 440.08 (3) (b), and 445.03 (2) (a), Stats., to clarify and establish licensure criteria for funeral directors, funeral director apprentices, and funeral establishments.

Section 2. FD 1.013 (intro.) is created to read:

FD 1.013 Definitions. As used in chs. FD 1 to 4 and FD 6:

Section 3. FD 1.015 (intro.) is created to read:

FD 1.015 Definitions. As used in this chapter:

Section 4. FD 1.02 (4) and (5) are amended to read:

FD 1.02 (4) Evidence of completion of 9 months or more instruction in a prescribed course in mortuary science meeting the requirements of s. FD 1.05 after having completed ~~1-year-of-college-work-or-equivalent-education~~ a 16-hour certification class approved by the board.

(5) Evidence of completion of 1 year of apprenticeship under s. 445.095, Stats., and s. FD 1.077.

Section 5. FD 1.05 is amended to read:

FD 1.05 Mortuary school. ~~The~~ After completing a 16-hour certification class approved by the board, the following shall be accepted as compliance with s. 445.045 (1) (e), Stats. The candidate shall have satisfactorily completed 9 months or more instruction in a prescribed curriculum in funeral service education offered by an educational institution accredited by the American board of funeral service education or otherwise deemed to be equivalent by the funeral directors examining board.

Section 6. FD 1.055 is created to read:

FD 1.055 Certification class requirement. In addition to s. FD 1.05, the applicant must provide evidence of completion of a 16-hour certification class approved by the board.

Section 7. FD 1.056 is created to read:

FD 1.056 Certification class content. (1) The 16-hour certification class shall contain the following instructional topics:

- (a) Funeral director apprentice expectations.
- (b) Funeral ethics and etiquette.
- (c) Understanding funeral services, gatherings, and various types of dispositions.
- (d) Laws, rules, and regulations of funeral service.
- (e) Workplace safety and Occupational Safety and Health Administration requirements.
- (f) Introduction to funeral service: notification of death, transfers, and arrangements.
- (g) Embalming, dressing, and casketing.
- (h) Grief and psychology of funeral services.

(i) In-person instruction.

(2) Following the instructional presentation of the material under sub. (1) a written examination, approved by the board, shall be administered.

(3) The written exam shall cover each of the topics under sub. (1) and be included within the 16-hour class requirement.

(4) A passing score of 75 percent on the written exam shall be considered as having successfully completed the certification class.

Section 8. FD 1.075 (3), (4), and (5) are created to read:

FD 1.075 (3) Under this section, when an apprentice is in the preparation room, the apprentice shall be within the line of sight of the supervising funeral director.

(4) The board may recognize the supervision of up to 2 apprentices at a funeral establishment that employs less than 3 full-time funeral directors.

(5) Except as provided in sub. (4), the board may recognize the supervision of additional apprenticeships at a funeral establishment provided the establishment employs at least one full-time funeral director per apprentice.

Section 9. FD 1.076 is created to read:

FD 1.076 Terms of apprenticeship. (1) An apprenticeship shall not exceed 4 years from the time of first registration unless a one-year extension is granted by the board. After 4 years from the time of first registration or, if an extension is granted, after the expiration of the extension, the apprenticeship may not be continued unless the apprentice again completes an approved certification class under s. FD 1.055.

(2) If, under this section, the apprentice retakes and successfully completes the board approved certification class, an additional 4-year period, subject to a board extension, shall begin.

(3) If an apprentice does not continue under the requirements of this chapter, the apprenticeship shall terminate.

(4) The provisions of this section shall be suspended while a registered apprentice is an active member of the military of the United States.

Section 10. FD 1.077 is created to read:

FD 1.077 Licensure eligibility. In addition to the requirements under this chapter and s. 445.095, Stats., eligibility for a funeral director license shall require an apprentice to present affidavits from the licensed funeral directors under whom the apprentice has worked to verify that during the apprenticeship the apprentice completed all of the following:

(1) Assisted in embalming for burial or shipment at least 25 dead human bodies.

- (2) Assisted in preparing 25 dead human bodies for burial or transportation, other than by embalming.
- (3) Assisted in at least 25 funeral services during the apprenticeship.

Section 10. FD 1.08 (Note) is amended to read:

FD 1.08 (Note). Application forms are available on the department's website at <https://dsps.wi.gov/pages/Home.aspx> , or upon by request at the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708 from the Department of Safety and Professional Services, P.O. Box 8935, Madison, WI 53708, or call (608) 266-2112.

Section 11. FD 2.02 (3), (4) are renumbered FD 1.015 (2), and (3).

Section 12. FD 3.015 is created to read:

FD 3.015 Definitions. As used in this chapter: "department" means the department of safety and professional services.

Section 13. FD 4.02 (1), (3) are renumbered FD 1.013 (1) and (2).

Section 14. FD 6.02 (2), (3) are repealed.

Section 15. 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)

This Proposed Order of the Department of Safety and Professional Services is approved for submission to the Governor and Legislature.

Dated 12-10-2018

Board

Marc Eernisse

Chairman,

Funeral Directors Examining Board

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 08/30/2018</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) FD 1 to 4, FD 6</p>	
<p>4. Subject Funeral director apprenticeship 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 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 checked="" 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 This rule amends the funeral director apprenticeship requirements to make them consistent with changes provided in 2017 Wisconsin Act 304.</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. Funeral Homes</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. N/A</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) None</p>	
<p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule This rule will make it easier for applicants to become a funeral director apprentice.</p>	
<p>16. Long Range Implications of Implementing the Rule The rule will also make it easier to maintain an ongoing apprenticeship.</p>	
<p>17. Compare With Approaches Being Used by Federal Government Federal regulations do not govern requirements for funeral director apprentices.</p>	
<p>18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota) Illinois: Illinois requires 30 semester hours of college credit plus Mortuary College or associate or bachelor's degree in mortuary science. Illinois has a funeral director internship which is considered a one-year apprenticeship. Interns must complete at least 24 funerals, and at least 24 preparations and embalmings. The intern must submit a report for each of the 24 funerals and each 24 body preparations. Reports are filed every three months.</p>	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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Minnesota: Minnesota requires a Bachelor of Science degree with a major in mortuary science received from an accredited school. Minnesota has an internship program. The internship can last between one and three years. A total of 25 embalmings and 25 funerals must be completed which is documented upon completion.

19. Contact Name

Helen Leong

20. Contact Phone Number

266-0797

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
-