

Notice of Hearing

The Funeral Directors Examining Board announces that it will hold a public hearing on a permanent rule for FD 6 relating to burial agreements funded with life insurance, at the time and place shown below.

Hearing Information

Date: January 22, 2020

Time: 9:30 AM

Location: 4822 Madison Yards Way, Room N208
Madison, Wisconsin

Appearances at the Hearing and Submittal of Written Comments

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.

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)

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)

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date December 17, 2019
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) FD 6	
4. Subject Burial Agreements Funded with Life Insurance	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected
7. Fiscal Effect of Implementing the Rule <input checked="" 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 type="checkbox"/> Could Absorb Within Agency's Budget	
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)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0	
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	
11. Policy Problem Addressed by the Rule 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, as this information is often difficult to obtain from the bank. 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 of a burial trust was burdensome to credential holders. The rule also replaces obsolete contact information for the board.	
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 website for 14 days to solicit economic impact comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rule. No comments were received.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. No governmental units participated in the development of the EIA.	
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.	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit of implementing the rule is to reduce the burden on credential holders when terminating a burial trust and replacing it with a life insurance policy. The alternative to not implementing the rule is to continue to require credential holders to include information in the termination notice that is burdensome to acquire.	
16. Long Range Implications of Implementing the Rule	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

The long range implications of implementing the rule are to ease an unnecessary burden on credential holders.

17. Compare With Approaches Being Used by Federal Government

The federal government does not provide required information that must be included in a notification that a burial trust is being terminated and replaced with a life insurance policy.

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

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.

19. Contact Name	20. Contact Phone Number
Jon Derenne, Administrative Rules Coordinator	(608) 266-0955

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
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