STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF RULE-MAKING PROCEEDINGS BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD	:	ORDER OF THE FUNERAL DIRECTORS EXAMINING BOARD ADOPTING RULES (CR 16-011)

ORDER

An order of the Funeral Directors Examining Board to repeal FD 1.03 (2) and 1.035; to amend FD 1.01, 1.03 (1) and 4.04 (8); and to repeal and recreate FD 1.02 and 1.10, relating to applications, examinations, renewal of funeral director licenses, and approved continuing education.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss. 445.04, 445.045, and 445.06, Stats.

Statutory authority: ss. 15.08 (5) (b), 440.08 (3) (b), and 445.03 (2)(a), Stats.

Explanation of agency authority:

15.08 (5) (b), Stats. – Each 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.

440.08 (3) (b), Stats. - The department or the interested examining board or affiliated credentialing board, as appropriate, may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential, in addition to the applicable requirements for renewal established under chs. 440 to 480, that the department, examining board or affiliated credentialing board determines are necessary to protect the public health, safety or welfare. The rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the educational or examination requirements that must be completed in order to obtain an initial credential from the department, the examining board or the affiliated credentialing board.

445.03 (2) (a), Stats. - The examining board may 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 examination and licensing of funeral directors and the registration of apprentices.

Related statutes or rules:

Wisconsin funeral director licensing requirements are found in ch. 445, Stats.,"Funeral Directors", and administrative rules promulgated by the Funeral Directors Examining Board found in chs. FD 1 to 6. Chapter 440, Department of Safety and Professional Services, and chs. SPS 1 to 9 outline the Department of Safety and Professional Services' administrative procedures for issuing licenses, including procedures for displinary actions against licensees.

Plain language analysis:

Section 1 amends s. FD 1.01, to clarify that, in addition to the statutory references currently included in the section, s. 440.08 (3)(b), Stats., also provides the statutory authority for the rule.

Section 2 repeals the provision outlining examination application procedures and replaces it with licensing application procedures and requirements. Wisconsin law prohibits credentialing boards from requiring a person to complete any postsecondary education before the person is eligible to take an examination for a credential. This revision allows an applicant to complete the licensure requirement in any order allowing the applicant to take an examination prior to the completion of the education requirements in compliance with s. 440.071, Stats.

Section 3 simplifies FD 1.03 (1) authorizing the board to establish the passing grade for licensure examinations.

Sections 4 and 5 repeals FD 1.06 (2) and 1.035, removing unnecessary and outdated provisions related to examination procedures.

Section 6 repeals FD 1.10 and recreates the section updating and clarifying renewal and reinstatement procedures to do the following:

- The rule continues to require a completed application and evidence that the licensee has completed the continuing education requirements specified in s. FD 4.03.

- The revision clarifies that if a person fails to renew a credential before an expiration date, the credential holder shall complete the renewal process and pay a late fee.

- The rule outlines a reapplication process for credential holders who have failed to renew a Wisconsin funeral director license for 5 or more years. All applicants under this subsection are required to submit an application, pay renewal and late fees, and pass the Wisconsin jurisprudence examination for funeral directors. Applicants who hold a valid funeral director license in good standing in another state are required to submit evidence of current licensure.

  Applicants whose license has expired for more than 5 but less than 10 years and who do not hold an active license from another state are required to attest to completion of 30 hours of continuing education approved by the board. The continuing education must have been completed within 4 years of application and must include a minimum of 10 hours of in-person instruction.

Finally, applicants whose funeral directors licenses have expired 10 years or more and who do not hold an active license in another state are required to complete the National Board Examination within the 12 months prior to application, along with 30 hours of continuing education courses. Continuing education courses must have been completed within 4 years of application and include a minimum of 10 hours of in-person instruction.

- The rule outlines procedures for reinstating a license for a license holder who has unmet disciplinary requirments or whose credential has been surrendered or revoked.

- This revision repeals FD 1.10 (4) related to exemptions to renewal time limits for a license holders who is an active member of the U.S. armed forces. The provision was in conflict with s. 321.60, Stats., which governs extension of licenses for service members.

Section 7 amends FD 4.04 (8) to accept courses approved by the Academy of Professional Funeral Service Practice to meet continuing education requirements without requiring approval by the Funeral Directors Examining Board for these courses, streamlining the process for receiving continuing education credits from this organization.

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

Licensing requirements for funeral directors are established by state law. Federal regulations do not govern applications, renewal, or reinstatement procedures for funeral directors.

Comparison with rules in adjacent states:

Illinois: Illinois requires applicants for a funeral director license to submit an application form and fee, provide proof that the applicant has met educational requirements established for funeral directors, a certificate of health, proof that the applicant has passed the National Board Examination of the International Conference of Funeral Service Examining Boards, Inc., and proof of successful completion of an internship. Applicants are required to complete at least 30 semester (45 quarter) hours of college credit and graduation from an approved mortuary science program of at least 12 months.

Illinois allows licensees with licenses that have expired for less than five years to renew their license by submitting an application form, paying renewal and late fees, and providing proof of completion of CE requirements. Licenses that have expired for more than five years may be reinstated by paying renewal and restoration fees, providing proof of completion of continuing education hours for one prerenewal period, and one of the following: 1) sworn evidence of practice in another jurisdiction, 2) affidavit attesting to military service, or 3) evidence of other education or experience within the 5 years preceding restoration demonstrating the licensee's fitness and competence in funeral directing and embalming. This competence may be demonstrated through proof of successful completion of the National Board Examination or proof of 6 credit hours of mortuary science coursework in addition to the continuing education requirements.

Iowa: Iowa requires applicants for a funeral director license to submit an application form and fee, provide proof that the applicant has met educational requirements, proof that the applicant has passed the National Board Examination of the International Conference of Funeral Service Examining Boards, Inc., and proof of successful completion of an internship. Iowa requires completion of 60 semester hours of college credit and graduation from a mortuary science program approved by the American Board of Funeral Service Education.

Iowa licenses that have expired within 5 years of the expiration date may be renewed by submitting an application form, paying renewal and late fees, and providing proof of completion of continuing education requirements. A license that has been inactive for more than five years in Iowa may be reinstated after the licensee provides documentation of any license held in other jurisdictions in which the applicant has practiced while the Iowa license was inactive and verifies that he or she has completed 48 hours of continuing education courses, including verification of completion of a college course of one semester hour in Iowa mortuary science laws and rules.

Michigan: Michigan requires applicants for a funeral director license to submit an application form and fee, proof that the applicant has passed the mortuary science exam, and proof of successful completion of an internship. Applicants must also provide proof that they have met educational requirements, which includes 60 semester hours or 90 quarter hours of non-remedial courses at an accredited college and one academic year of instruction from a mortuary science program. Michigan contracts with PSI Services, LLC., to conduct the mortuary science examination.

Mortuary science licenses expire October 31st of every odd-numbered year. Any applicant who fails to renew their license within 60 day late renewal period must apply for relicensure. Michigan allows a license to be renewed within 3 years of the expiration date by submitting an application form, paying renewal and late fees and providing proof of completion of continuing education requirements. A person who seeks relicensure more than 3 years from his or her license expiration must meet current educational requirements for a new license and pass the current written examination on Michigan's law and rules related to funeral directors.

Minnesota: Minnesota requires applicants for a funeral director license to submit an application form and fee, proof that the applicant has passed the National Board Exam of the International Conference of Funeral Examining Boards and a state exam encompassing the laws and rules of Minnesota. The applicant must also provide proof of successful completion of an internship. Minnesota requires applicants to hold a bachelor of science degree with a major in mortuary science, a bachelor of science or arts degree with a separate course of study in mortuary science, or completed the equivalent educational requirements.

Licenses expire on December 31 of the calendar year in which the license was issued. Renewal applications received up to 31 days after the December 31 deadline must include a late filing penalty fee. A license lapses when a renewal application and renewal fees are not received within 31 calendar days after the expiration date. The commissioner issues a cease and desist order to prevent an individual with a lapsed license from practicing mortuary science. Minnesota allows a licensee to restore a lapsed license within one year after the license expiration date by submitting an application and paying a renewal and late fee, provided that the person has not

violated the cease and desist order. Licensees with licenses that have lapsed for more than a year must meet all requirements of an initial license to be relicensed.

Summary of factual data and analytical methodologies:

The Funeral Directors Examining Board reviewed existing regulations and updated provisions to ensure compliance with 2013 Wisconsin Act 114, which prohibits the department or credentialing boards from requiring applicants to complete any postsecondary education or other program before taking an examination for a credential before issuing the credential. The Board also proposed changes consistent with current industry practices to modernize application, licensing renewal, and acceptance of continuing education courses approved by the Academy of Professional Funeral Service Practice.

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

The department posted the rule for 14 days to solicit comments regarding the potential economic impact of the rule.

Fiscal Estimate and Economic Impact Analysis:

The economic impact analysis is attached.

Effect on small business:

These rules are not anticipated to 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 Jeff.Weigand@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Sandra Cleveland, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-266-0797; email at Sandy.Cleveland@wisconsin.gov.

TEXT OF RULE

SECTION 1. FD 1.01 is amended to read:

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

SECTION 2. FD 1.02 is repealed and recreated to read:

FD 1.02 Applications. An applicant for a funeral director's license shall submit all of the following:
(1) A completed application.
(2) Required fee under s. 440.03 (9) (a), Stats.
(3) Evidence of completion of 2 academic years of instruction in a recognized college or university meeting the requirements of s. FD 1.04.
(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.
(5) Evidence of completion of 1 year of apprenticeship under s. 445.095, Stats.
(6) If the applicant has an arrest or conviction record, 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.
(7) Evidence of passage of the National Board Examination of the International Conference of Funeral Service Examining Boards.
(8) Evidence of passage of the Wisconsin jurisprudence examination for funeral directors.

SECTION 3. FD 1.03(1) is amended to read:

(1) ~~To pass the~~ ~~initial~~ The passing grade on each licensure examination ~~each applicant~~ shall ~~receive a grade~~ be determined by the board to represent minimum competence to practice. ~~The board shall determine the passing grade after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing grade for the examination at that point which represents minimum acceptable competence in the profession.~~ The board may adopt the recommended passing score of the examination provider.

SECTION 4. FD 1.03(2) is repealed.

SECTION 5. FD 1.035 is repealed.

SECTION 6. FD 1.10 is repealed and recreated to read:

FD 1.10 License renewal and reinstatement procedures. (1) RENEWAL WITHIN 5 YEARS. A credential holder shall renew the license by paying the renewal fee specified in s. 440.08 (2), Stats., and attesting to completion of the continuing education required under s. FD 4.03. If the credential is not renewed before its expiration date, the credential holder shall pay a late renewal fee.

(2) RENEWAL AFTER 5 YEARS. A credential holder who has failed to renew a license within 5 years after the renewal date holds an expired license and may not reapply for the license using the initial application process. This subsection does not apply to license holders who have unmet disciplinary requirements or whose credentials have been surrendered or revoked. An applicant who holds an expired funeral director's license shall submit all of the following:
(a) A completed application.
(b) The renewal and late fees specified in s. 440.08 (2) and (3) (a), Stats.
(c) Evidence of passage of the Wisconsin jurisprudence examination for funeral directors.
(d) Evidence of one of the following:

1. Current licensure as a funeral director if the applicant holds an active license in good standing as a funeral director in another state.

2. If the applicant's funeral director's license has expired for more than 5 but less than 10 years and the applicant does not hold an active license in good standing as a funeral director in another state, attestation to the completion of 30 hours of continuing education approved by the board. The continuing education courses shall have been completed within the 4 years prior to application for licensure under this subsection and shall include a minimum of 10 hours of in-person instruction.

3. If the applicant's funeral director's license has expired for 10 years or more and the applicant does not hold an active license in good standing as a funeral director in another state, the applicant shall provide evidence of passage of the National Board Examination of the International Conference of Funeral Service Examining Boards within 12 months prior to application for a license under this subsection and attestation to the completion of 30 hours of continuing education approved by the board. The continuing education courses shall have been completed within the 4 years prior to application for licensure under this subsection and shall include a minimum of 10 hours of in-person instruction.

(3) REINSTATEMENT. A credential holder who has unmet disciplinary requirements and failed to renew the credential within 5 years or whose credential has been surrendered or revoked may apply to have the license reinstated in accordance with all of the following:
(a) Evidence of completion of the requirements in sub. (2) if the credential has not been active within the last 5 years.
(b) Evidence of completion of disciplinary requirements, if applicable.
(c) Evidence of rehabilitation or change in circumstances, warranting reinstatement of the credential.

SECTION 7. FD 4.04 (8) is amended to read:

FD 4.04 (8) A continuing education course sponsored by a national, international or state funeral director's association, or an educational institution accredited by the American Board of Funeral Service Education or approved by the Academy of Professional Funeral Service Practice

or otherwise deemed to be equivalent by the board, which satisfies the criteria established in sub. (1)(a) to (d) and s. FD 4.045, shall be approved by the board without receipt of a course approval application from the program provider.

SECTION 8. 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)

Dated August 2, 2016 Agency Thomas Bradley (DW)

Chairperson
Funeral Directors Examining Board