



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

February 17, 2004

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 559: Cremation of Human Remains

Assembly Bill 559 would create a council, professional credential, and licensure fee for crematory authorities that would be regulated directly by the Department of Regulation and Licensing (R&L). Assembly Bill 559 was introduced on October 10, 2003, and was referred to the Assembly Committee on Small Business. On October 27, 2003, the Committee adopted Assembly Amendment 1, and recommended AB 559, as amended, for passage on a 10-0 vote. On October 27, 2003, the bill was referred to the Joint Committee on Finance.

CURRENT LAW

Under current law, R&L regulates the following entities or occupations related to human burial: (1) cemetery authorities; anyone who owns a cemetery; (2) preneed sellers; anyone who sells or solicits the sale of cemetery merchandise or an undeveloped space under a preneed sales contract; (3) cemetery salespersons; any individual that sells, or solicits the sale of ten or more cemetery lots or mausoleum spaces during a calendar year [persons who sell lots or spaces for religious organizations, municipalities, or fraternal or benevolent societies do not have to register with the Department]; (4) funeral establishments; any building or part of a building used in the care and preparation for burial or transportation of dead human bodies or for holding or conducting of funeral services; and (5) funeral directors; a person engaged in embalming or otherwise preparing for the burial or disposal, or directing and supervising the burial or disposal, of dead human bodies, or a person that uses the words, "funeral director," "mortician" or any other title implying that he or she is engaged as a funeral director.

The Department of Regulation and Licensing does not currently regulate crematory authorities, however some of their activities are regulated under the Department of Commerce

and there are other requirements of crematory authorities involving the investigation of a death. Under current law, the Department of Commerce is responsible for approving the construction of crematoriums. In addition, s. 979.10 of the statutes, regarding investigation of deaths specifies that no person may cremate a corpse of a deceased person within 48 hours of the death, or the discovery of death, unless a contagious or infectious disease caused death. No person may cremate a corpse unless that person has received a cremation permit from a coroner or medical examiner in the county where the death occurred, or the county where the cremation will take place in cases where the death occurred outside the state. In such cases the coroner or medical examiner must make careful inquiries into the cause and manner of death.

SUMMARY OF BILL

Registration of Crematory Authority

Assembly Bill 559 would prohibit an individual from cremating human remains unless the individual has registered with the Department of Regulation and Licensing as a crematory authority, pays the applicable initial and renewal credential fees, and submits an application to the Department stating: (1) the name and address of the applicant or business entity; (2) the address of the crematory; (3) a description of the structure and equipment within the proposed crematory; and (4) any other information required by R&L. Crematory authorities would be regulated by the Secretary of R&L, rather than by a separate licensing board.

The bill would subject crematory authorities to the current law licensing fee of \$53 and a license renewal fee of \$53 on January 1 of each even-numbered year.

Assembly Bill 559 would authorize R&L to promulgate rules interpreting or administering any of the provisions of the bill. The Department would also be allowed to conduct investigations or inspections and hearings to determine whether a violation of the provisions had occurred. Regulation and Licensing could reprimand an individual who violates provisions of this bill, including denying, limiting, suspending, or revoking registration if an applicant or individual: (1) makes a material misstatement on an initial or renewal credential application; (2) shows lack of professional knowledge, skills, or principles while practicing as a crematory authority; (3) is arrested or convicted of an offense substantially related to crematory authority duties; (4) advertises in a false, deceptive, or misleading manner; (5) advertises or practices or attempts to practice under another person's name; or (6) violates any of the statutes or rules created in these provisions for crematory authorities. Assembly Bill 559 would specify that any individual violating the provisions of the bill or the rules created relating to these provisions would be subject to a fine of up to \$1,000 or imprisonment of up to six months. The individual may also be required to forfeit up to \$1,000 for each separate violation. Each day of continued violation would be counted as a separate violation. Prosecution of these cases would be the responsibility of local officials.

Crematory Authority Council

Assembly Bill 559 would create a crematory authority council in R&L consisting of: the Secretary of the Department, or a designee of the Secretary, as a non-voting member; three licensed funeral directors who operate crematories; three representatives of cemetery authorities who operate crematories; and one public member. All the voting members would serve three-year terms. The bill would provide that the initial council membership would include one funeral director and one cemetery authority director that operate crematories, with terms that would end on July 1, 2006, one funeral director and one cemetery director with a term that would end on July 1, 2007, and one funeral director and one cemetery director with a term that would end on July 1, 2008. This would establish the appointment of one-third of the council's crematory operator members for each of the three years of a term, following the initial appointments.

Authorizing Agent

Assembly Bill 559 would specify that only an authorizing agent could direct the cremation of the human remains of a decedent. The authorizing agent would be determined using a prioritized list of the decedent's next of kin, as follows: (1) the decedent's surviving spouse; (2) any one of the decedent's surviving adult children who confirms in writing to the crematory authority that all other surviving children have been notified about the cremation and the other adult children do not object in writing to the crematory authority; (3) a surviving parent of the decedent unless another surviving parent of the decedent provides a written objection to the cremation to the crematory authority; (4) the next closest kin unless another surviving individual of the same degree of kinship provides a written objection to the cremation to the crematory authority; or (5) any other person. Under the bill, if the next of kin with the highest priority is dead, incapacitated, or declines to act as the authorizing agent and does not object to the cremation in writing the next listed individual would act as the authorizing agent.

Under the bill, if the decedent's estate is insufficient to pay for the final disposition of the human remains, or if the final disposition is the responsibility of the state or a local unit of government, then the following individuals could act as the authorizing agent, following the next of kin, but excluding "any other person": (a) the coroner or medical examiner of the county in which the decedent died; or (b) the decedent's guardian at the time of death. Assembly Bill 559 would specify that these individuals could not cremate the decedent if any member of the family provides information or other evidence proves that cremation was contrary to the decedent's religious beliefs. Under this bill, the authorizing agent would be liable for any damage resulting from authorizing the cremation of a decedent's remains.

Assembly Bill 559 would specify that, for purposes of determining an authorizing agent for the cremation of human remains, an individual would be considered incapacitated if two unrelated licensed physicians, or one unrelated licensed physician and one unrelated licensed psychologist have examined the individual and signed a statement specifying that the individual is incapacitated. Assembly Bill 559 would specify that "mere old age, eccentricity, or physical

ability would be insufficient evidence of incapacitation." Individuals would have to make all reasonable efforts to contact persons higher on the priority list, if applicable, and verify that they do not object to the cremation, under this bill.

Assembly Bill 559 would authorize individuals to act as their own authorizing agent or authorize another individual to act as their agent for purposes of directing the cremation of any of their own body parts.

Under AB 559, the authorizing agent would be responsible for determining the manner in which the cremated remains (defined in AB 559 as all human remains recovered from the cremation of a human body or body part and the residue of any container or foreign materials that were cremated with the body or body part) are disposed. If the authorizing agent fails to determine the manner of final disposition within 30 days of the cremation the crematory authority would have to return the cremated remains to the person, cemetery authority, or business entity that delivered the remains, the person, cemetery authority, or business entity would have to accept delivery of these remains. Assembly Bill 559 specifies that after 60 days of having received the cremated remains, the person to whom the cremated remains were delivered may determine the manner in which the cremated remains are to be disposed. In such a case the person would have to make a written record of the final disposition. Under the bill, the authorizing agent or the decedent's estate would be liable for all reasonable expenses related to the delivery and disposal of the remains.

Cremation Authorization Form

Assembly Bill 559 would require an authorizing agent that is requesting cremation to complete a form that includes the following: (1) the name of the decedent and the time of the decedent's death; (2) the name of the authorizing agent and his or her relationship to the decedent; (3) a statement specifying that no other person has superior authority to determine the final disposition of the body, or that all persons with superior authority do not object to cremation; (4) a statement specifying that the agent does not believe that the decedent's remains contain anything that would damage the cremation facility or harm an individual working at the facility; (5) the name of the funeral director, funeral establishment, or cemetery that the agent has authorized to receive the cremated remains or information of the alternative arrangements that have been made for the cremated remains; (6) the manner in which the final remains will be disposed, if known by the agent; (7) an itemized list of any valuables on the decedent that must be removed before cremation and returned to the authorizing agent; (8) if known, the date and time of the viewing of services; and (9) a signature from the agent attesting to the accuracy of the information provided.

Assembly Bill 559 would specify that the authorizing agent could cancel the cremation at any time up to actual cremation. In such an event, the agent must provide the crematory authority with written instructions regarding the final disposition of the decedent's remains. The crematory authority could not cremate the remains before the date and time specified in

authorization form. A crematory authority could not simultaneously cremate the remains of multiple decedents unless consent is granted by each of the appropriate authorizing agents. Unless the authorizing agent grants consent, no person could commingle cremated remains, including the inclusion of multiple cremated remains within the same container.

Assembly Bill 559 would allow the authorizing agent to delegate the authority to direct the cremation of a decedent's remains if the following information is provided: (1) the name and address of the authorizing agent and the agent's relationship to the decedent; and (2) the name and address of the individual to whom the delegated authority will be given, as well as the relationship between the authorizing agent and the person delegated authority.

Receipt and Acceptance of Human Remains

The bill would require the crematory authority to provide the following information as proof of receipt of human remains: (1) the name of the decedent; (2) the date and time in which the remains were delivered; (3) a description of the casket or container in which the remains were delivered; (4) the name and signature of the person that delivered the remains as well as the funeral establishment or business entity with which the person is affiliated; and (5) the name and signature of the person affiliated with the crematory authority who received the remains. All of this information would have to be kept as part of the crematory authority's permanent records. The bill specifies that a crematory authority could not refuse the delivery of the remains based solely on the fact that the remains were not placed in a casket or have not been embalmed, however the crematory authority would be allowed to refuse the remains if any of the following apply: (1) the casket or container used for the remains has evidence of bodily fluid leakage; (2) the authority has knowledge of a dispute regarding the cremation, unless the authority receives a copy of a court order showing the dispute is resolved; (3) the authority has reason to believe that a representation of the authorizing agent is false; or (4) the authority has reason to believe that the human remains contain a device that would damage the cremation chamber or harm an individual performing the cremation.

Cremation Requirements

Assembly Bill 559 would forbid a crematory authority from cremating human remains unless the authority receives a completed authorization form from the authorizing agent, a copy of the cremation permit, and, if required, a report on the final disposition of the human corpse. Under current law, a cremation permit may be required in cases where the body is transferred to another state or from another state, the death is under investigation, the corpse is a result of stillbirth, or the deceased person had a communicable disease which is determined as dangerous to the public health. The bill specifies that the authority would have to permanently keep all of this documentation as part of its records. Assembly Bill 559 specifies that the authority would have the right to return the remains to the person, funeral establishment, or business entity that delivered the remains if the authority discovers that there is a dispute regarding the cremation of the remains. In such a case the original deliverer of the remains could not refuse delivery from

the authority. The bill would require the crematory authority to place the human remains in holding facility until the remains are cremated. The crematory would have to restrict holding facility access to authorized personnel.

Assembly Bill 559 would specify that a crematory authority could not require that human remains be placed in a casket in order to be cremated. The bill would require the crematory authority to cremate the remains along with the container or casket in which the remains are held as long as the container or casket is composed of readily combustible materials, is resistant to leakage and spillage, completely covers the human remains, is sufficiently rigid for handling, and is able to protect the health and safety of crematory personnel.

The bill would require the cemetery authority to maintain a permanent record, at its place of business, of each cremation including the name of the decedent, the date of the cremation, and a description of the manner in which the cremated remains were disposed.

Assembly Bill 559 would require the authority to ensure that the identity of each decedent's remains is known through the entire cremation process. The bill specifies that once a cremation has been completed, the crematory authority would be required, as far as practicable, to remove all of the cremated remains from the cremation chamber. Under the bill, the cremated remains would have to be placed in a container that is large enough to hold all of the cremated remains and that could be closed in a manner that prevents the entrance of foreign materials, leakage, or spillage. If the authorizing agent chooses a container, and the container is not large enough to hold all of the remains, then the crematory authority would be required to return the excess remains in a separate container.

The bill would require the cremated remains to be delivered by the crematory authority, or in person by a delivery service that has a system for tracking the delivery. The authority would have to obtain a receipt from the person to whom the remains were delivered. The bill would specify that the receipt include the name of the decedent, the date and time of the delivery, the name and signature of the person delivering the remains, and the name and signature of the person, along with the name of the funeral establishment of business entity in which that person is affiliated. The information on the delivery of the cremated remains, under the bill, would have to be kept as part of the crematory authority's permanent records. The bill specifies that cremated remains be placed in a grave, niche, or crypt, unless all of the remains are reduced to a particle size of less than one-eighth of an inch in which case the remains could be disposed of in another lawful manner.

Assembly Bill 559 would prohibit a cemetery authority from selling any material or device, including a prosthetic or medical device of a decedent, or a casket or container that had been used for cremating human remains.

Under AB 559, the crematory authority would be immune to civil liability for damages resulting in the cremation of human remains, including damages to prosthetics or medical

devices or valuables of the decedent, if the authority has complied with all of the requirements under the bill. However, the authority would be liable for damages resulting from intentional misconduct, negligent conduct, or failure to return valuables listed by the authorizing agent.

Transmission of Information

All required written authorizations, under the bill, could be transmitted by facsimile.

Disposal of Human Remains During State of Emergency

Under current law, when the Governor declares a state public emergency, a public health authority may: (1) issue and enforce reasonable orders for the safe disposal of human remains, which may include embalming, burial, cremation, interment, disinterment, transportation, and other disposal; (2) take possession and control of any human remains; (3) order the burial or cremation of any human remains of an individual who has died of a communicable disease within 24 hours of the individual's death while considering the religious, cultural, or individual beliefs of the deceased and the family of the deceased; (4) require a funeral establishment to accept human remains or to provide use of its business or facility, which may include transference of the management and supervision of the funeral establishment to the public health authority, during the state of emergency; (5) require all human remains to be properly labeled, including any information about the circumstances of death and any communicable disease; (6) maintain or require the maintenance of a written or electronic record of all human remains that are disposed of, including all available identifying information and information concerning the circumstances of death and disposal; and (7) authorize a county medical examiner or a county coroner to appoint emergency assistant medical examiners or emergency deputy coroners to perform the duties of the office of medical examiner or coroner, and to prescribe the duties of the emergency assistant medical examiners or emergency deputy coroners.

Assembly Bill 559 would specify that nothing in the newly-created duties of a crematory authority would supersede the public health authority's duties during such a public emergency.

Effective Date

Provisions of the bill would take effect on the first day of the seventh month after publication.

ASSEMBLY AMENDMENT 1

Assembly Amendment 1 to AB 559 would specify that the provisions of the bill would not apply to: (1) a person performing duties as an officer of any public institution, medical school, medical college, county medical society, anatomical association, accredited college of embalming; (2) any other recognized person carrying out the statutes prescribing the conditions under which

donated or indigent dead human bodies are held subject for anatomical study; or (3) a person who is acting according to the customs or rites of any religious sect in the burial of its dead.

FISCAL EFFECT

Under this bill, R&L would collect licensing revenue from the credentialing of crematory authorities, but would have no additional appropriation authority to expend additional revenue.

The Department estimates that there would be 100 credentialed crematory authorities, under this bill. The initial and renewal credential rate established, under this bill, for crematory authorities would be \$53. Renewals would occur on a biennial basis. Therefore, the Department estimates that total revenue would equal \$5,300 biennially. Since this bill would take effect on the first day of the seventh month after publication, it is likely that all initial credential payments would occur in 2004-05. Assembly Bill 559 would establish a renewal date of January 1, of even numbered years, so it is likely that first renewals would not be received until the 2005-06 fiscal year. Of the amounts collected by the Department, 10% must be deposited in the general fund, with the remaining 90% deposited in the agency's general program operations appropriation [s. 20.165(1)(g) of the statutes]. It is therefore estimated that the Department would credit \$500 to the general fund as GPR-Earned and \$4,800 into R&L's general program operations appropriation in 2004-05 as PR-REV.

The Department of Regulation and Licensing estimates that there would be annual costs of \$7,700 PR related to licensure and regulation for the provisions of this bill. The annual costs would include \$3,200 PR annually for travel, meals, lodging, and administrative assistance for four annual meetings of the Crematory Authority Council and \$4,500 PR annually for enforcement costs, including intake and screening, administrative assistance, legal council, investigations, and hearings. The Department states that there would also be \$14,400 PR of one-time costs for: (1) meetings of the Crematory Authority Council to develop rules (\$2,300 PR); (2) legal, paralegal, and program management for rulemaking (\$5,700 PR); (3) production of applications, forms, and code books (\$3,000 PR); (4) creating a web based credentialing system (\$2,400 PR); and (5) updating the interactive voice response and automatic call distribution systems for directing phone calls to the Department (\$1,000 PR).

Prepared by: Darin Renner