

Clearinghouse Rule 20-044

STATE OF WISCONSIN
FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : FUNERAL DIRECTORS
FUNERAL DIRECTORS EXAMINING BOAD : 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)
