



1999 SENATE BILL 348

January 27, 2000 - Introduced by Senators BURKE, SCHULTZ and BRESKE, cosponsored by Representatives URBAN, PETTIS, SCHNEIDER, KREUSER, HASENOHRL and PLOUFF. Referred to Economic Development, Housing and Government Operations.

1 **AN ACT** *to renumber* 440.92 (3) (a) 1. and 2.; *to renumber and amend* 440.92
2 (3) (a) (intro.); *to amend* 440.92 (2) (i), 440.92 (3) (b), 440.92 (3) (c) (intro.),
3 440.92 (3) (d), 440.92 (4) (a) (intro.), 440.92 (9) (b) 3., 440.92 (9) (c) and 440.92
4 (9) (f); and *to create* 440.90 (3m) and 440.92 (3) (bm) of the statutes; **relating**
5 **to:** preneed sales contracts for sales of cemetery merchandise.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, a preneed seller that sells cemetery merchandise under a preneed sales contract is required to deposit into a preneed trust fund either an amount equal to 40% of each payment of principal that is received from the sale, or a specified percentage of each payment that is based on the actual cost of the cemetery merchandise to the preneed seller, whichever is greater.

This bill changes this requirement so that, with two exceptions, a preneed seller that sells cemetery merchandise under a preneed sales contract is required to deposit 100% of each payment of principal that is received into a preneed trust fund. The bill exempts the following preneed sellers from this requirement: 1) a preneed seller who sells cemetery merchandise as an employe or agent of a cemetery authority of a cemetery that is affiliated with a religious society; and 2) a preneed seller who sells cemetery merchandise as an employe or agent of a cemetery authority of a cemetery

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that is operated by a city, village or town. To qualify for either exception, the cemetery authority must not sell funeral merchandise or funeral services.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 440.90 (3m) of the statutes is created to read:

2 440.90 **(3m)** "Funeral merchandise or funeral services" has the meaning given
3 in s. 445.125 (3m) (a) 4.

4 **SECTION 2.** 440.92 (2) (i) of the statutes is amended to read:

5 440.92 **(2)** (i) If a preneed sales contract includes provisions for the sale of
6 cemetery merchandise or an undeveloped space that is subject to the trusting
7 requirements under sub. (3) ~~(a) (ag), (ar)~~ and (b) and for the sale of other goods or
8 services that are not subject to the trusting requirements under sub. (3) ~~(a) (ag), (ar)~~
9 and (b), the sale price of the goods or services that are not subject to the trusting
10 requirements may not be inflated for the purpose of allocating a lower sale price to
11 the cemetery merchandise or undeveloped space that is subject to the trusting
12 requirements.

13 **SECTION 3.** 440.92 (3) (a) (intro.) of the statutes is renumbered 440.92 (3) (ag)
14 and amended to read:

15 440.92 **(3)** (ag) ~~A Except as provided in par. (bm), a preneed seller shall deposit~~
16 into a preneed trust fund an amount equal to ~~at least 40%~~ 100% of each payment of
17 principal that is received from the sale of cemetery merchandise under a preneed
18 sales contract, ~~or the wholesale cost ratio for the cemetery merchandise multiplied~~
19 ~~by the amount of the payment of principal that is received, whichever is greater.~~

20 (ar) In addition to the amount required to be deposited under this paragraph
21 par. (ag) for the sale of cemetery merchandise and except as provided in par. (c), if a

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1 preneed seller receives payment for the sale of an undeveloped space under a preneed
2 sales contract, the preneed seller shall deposit a percentage of each payment of
3 principal that is received from the sale of the undeveloped space into a preneed trust
4 fund, determined as follows:

5 **SECTION 4.** 440.92 (3) (a) 1. and 2. of the statutes are renumbered 440.92 (3)
6 (ar) 1. and 2.

7 **SECTION 5.** 440.92 (3) (b) of the statutes is amended to read:

8 440.92 (3) (b) The preneed seller shall make the deposits required under par.
9 ~~(a)~~ (ag) and (ar) within 30 business days after the last day of the month in which each
10 payment is received. Preneed trust funds shall be deposited and invested as
11 provided in s. 157.19.

12 **SECTION 6.** 440.92 (3) (bm) of the statutes is created to read:

13 440.92 (3) (bm) A preneed seller is not required to make the deposits required
14 under par. (ag) if any of the following applies:

15 1. The preneed seller sells the cemetery merchandise as an employe or agent
16 of a cemetery authority of a cemetery that is affiliated with a religious society
17 organized under ch. 187 and the cemetery authority does not sell funeral
18 merchandise or funeral services.

19 2. The preneed seller sells the cemetery merchandise as an employe or agent
20 of a cemetery authority of a cemetery that is operated by a city, village or town and
21 the cemetery authority does not sell funeral merchandise or funeral services.

22 **SECTION 7.** 440.92 (3) (c) (intro.) of the statutes is amended to read:

23 440.92 (3) (c) (intro.) A preneed seller is not required to make the deposits
24 required under par. ~~(a)~~ (ar) 1. and 2. if any of the following applies:

25 **SECTION 8.** 440.92 (3) (d) of the statutes is amended to read:

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1 440.92 (3) (d) If payments are received under a preneed sales contract for an
2 undeveloped space, the preneed seller shall make deposits into the care fund
3 required under s. 157.12 (3) in addition to any deposits required under ~~par. (a)~~ pars.
4 (ag) and (ar).

5 **SECTION 9.** 440.92 (4) (a) (intro.) of the statutes is amended to read:

6 440.92 (4) (a) (intro.) Any person who sells or solicits the sale of cemetery
7 merchandise under a preneed sales contract is not required to be registered under
8 sub. (1) and the requirements of sub. (3) ~~(a) (ag), (ar)~~ and (b) do not apply to the sale
9 if all payments received under the preneed sales contract are trusted as required
10 under s. 445.125 (1) (a) 1. or if all of the following conditions are met:

11 **SECTION 10.** 440.92 (9) (b) 3. of the statutes is amended to read:

12 440.92 (9) (b) 3. A notarized statement of a person who is legally authorized to
13 act on behalf of the religious society under this subsection that, during the 12-month
14 period immediately preceding the date on which the certification is filed with the
15 department, each employe specified under subd. 2. and the cemetery authority have
16 either fully complied or have substantially complied with subs. (2), (3) ~~(a) (ag), (ar)~~
17 and (b) and (5).

18 **SECTION 11.** 440.92 (9) (c) of the statutes is amended to read:

19 440.92 (9) (c) If the statement under par. (b) 3. includes a statement of
20 substantial compliance, the statement of substantial compliance must also specify
21 those instances when the employe or cemetery authority did not fully comply with
22 sub. (2), (3) ~~(a) (ag), (ar)~~ or (b) or (5).

23 **SECTION 12.** 440.92 (9) (f) of the statutes is amended to read:

24 440.92 (9) (f) The religious society that is affiliated with a cemetery to which
25 a certification under this subsection applies is liable for the damages of any person

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1 that result from the failure of any employe specified under par. (b) 2. or the cemetery
2 authority to fully comply with sub. (2), (3) ~~(a)~~ (ag), (ar) or (b) or (5) during the
3 12-month period for which such compliance has been certified under this subsection.

4 **SECTION 13. Initial applicability.**

5 (1) The treatment of sections 440.90 (3m) and 440.92 (2) (i), (3) (a) (intro.), (b),
6 (bm) and (d), (4) (a) (intro.) and (9) (b) 3., (c) and (f) of the statutes first applies to
7 payments received under preneed sales contracts that are entered into, extended,
8 modified or renewed on the effective date of this subsection.

9 **SECTION 14. Effective date.**

10 (1) This act takes effect on the first day of the 3rd month beginning after
11 publication.

12

(END)