

1989 Senate Bill 252

Date of enactment: April 23, 1990

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# 1989 WISCONSIN ACT 307

AN ACT *to repeal* 157.063 (title), 157.11 (9) (d), 452.02 (title) and (6) and 452.022 (1) (a) and (6) (title); *to renumber* 157.061 (3), 157.065 (4), 440.05 (3) (L) 1, 440.05 (3) (p) 3, 452.02 (4) (a) to (d) and 452.022 (title) and (1) (intro.); *to renumber and amend* 157.063 (1), 157.063 (2) and (3), 157.063 (4), 157.07, 157.08 (4), 157.125, 452.02 (1), (5) and (8), 452.02 (7), 452.022 (1) (b) to (d), (2) to (4) and (7), 452.022 (6) and 452.10 (5); *to consolidate, renumber and amend* 452.02 (3) and (4) (intro.); *to amend* 20.165 (1) (g), 32.57 (2) (k), 66.04 (2) (c), 69.18 (4) (intro.), 70.11 (13), 157.062 (title), (1) to (5) and (6) (b) and (c), 157.062 (8) (b) 3 and 4, 157.064 (title), 157.064 (2), 157.064 (3), 157.065 (title) and (1) (b) 6, 157.065 (1) (b) 2, 157.065 (2) (a) 2, 3 and 4. (intro.), (3) and (3m) (a), 157.08 (1), 157.08 (3), 157.09, 157.10, 157.11 (1) to (5), 157.11 (7), 157.11 (8), 157.11 (9) (title), (a) and (b), 157.11 (9) (e) and (f), 157.12 (title), 157.12 (2) (title), (a) and (b), 157.12 (2) (c), 157.12 (3) (title) and (a) (intro.) and 1, 157.12 (3) (a) 2, 157.12 (3) (b), 157.50 (6), 187.04, 423.102, 440.05 (intro.), 440.05 (8), 445.12 (6), 445.125 (1) (a), 445.125 (1) (e), 452.03, 452.05 (1) (a), 452.10 (2) (a) and (4) (a), 452.12 (6) (a), 452.13 (1), 452.14 (1) and (3) (i), 452.16 (1), 452.17 (2), 452.17 (3), 452.19, 701.11 (2), 863.09 (2), 880.26 (3) and 895.04 (5); *to repeal and recreate* 157.061 (1), 157.061 (2), 157.08 (2), 157.12 (1), 157.12 (2) (d) and 157.12 (4); and *to create* 20.165 (1) (q), 25.17 (1) (at), 25.85, 157.061 (1g), (1m) and (1r), 157.061 (2m), 157.061 (3) to (10) and (11g) to (17), 157.062 (6m), 157.064 (7), 157.07 (6), 157.08 (5), 157.11 (10), 157.115, 157.12 (2) (bm), 157.12 (3) (a) 3, 157.125 (2), 157.128, 157.13, 157.15, 157.19, 157.62, 157.63, 157.635, 157.64, 157.65 and subchapter VIII of chapter 440 of the statutes, **relating to:** the regulation of cemeteries, sales of cemetery lots, merchandise and mausoleum spaces, granting rule-making authority and providing a penalty.

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

**SECTION 1.** 20.165 (1) (g) of the statutes, as affected by 1989 Wisconsin Act 31, is amended to read:

20.165 (1) (g) *General program operations.* The amounts in the schedule for the licensing, rule making and regulatory functions of the department, except for preparing, administering and grading examinations. Ninety percent of all moneys received under chs. 163 and 440 to 459, except ss. 163.80 and 440.05 (1) and 440.92 (8), shall be credited to this appropriation.

**SECTION 2.** 20.165 (1) (q) of the statutes is created to read:

20.165 (1) (q) *Cemetery consumer protection claims.* From the cemetery consumer protection fund, a sum suf-

ficient to reimburse consumers of cemetery merchandise, services, lots and mausoleum spaces for losses under s. 440.92 (8).

**SECTION 3.** 25.17 (1) (at) of the statutes is created to read:

25.17 (1) (at) Cemetery consumer protection fund (s. 25.85);

**SECTION 4.** 25.85 of the statutes is created to read:

**25.85 Cemetery consumer protection fund.** There is created a separate nonlapsible trust fund known as the cemetery consumer protection fund, to consist of moneys received under s. 440.92 (8).

**SECTION 5.** 32.57 (2) (k) of the statutes is amended to read:

32.57 (2) (k) Owned or operated for cemetery purposes by any cemetery association ~~under s. 157.062 or~~

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any other person maintaining a cemetery authority, as defined in s. 157.061 (2), including any building located in the cemetery and owned and occupied exclusively by the cemetery ~~association~~ authority for cemetery purposes or any property held under s. 157.064 or 157.11.

**SECTION 6.** 66.04 (2) (c) of the statutes is amended to read:

66.04 (2) (c) Any local government, as defined under s. 25.50 (1) (d), may invest surplus funds in the local government pooled-investment fund. Cemetery perpetual care funds or endowment funds, including gifts where the principal is to be kept intact, may also be invested under ch. 881.

**SECTION 7.** 69.18 (4) (intro.) of the statutes is amended to read:

69.18 (4) AUTHORIZATION FOR DISINTERMENT AND REINTERMENT. (intro.) The coroner or medical examiner of the county in which a decedent's corpse is interred shall issue an authorization for disinterment and reinterment upon receipt of an order of a court of competent jurisdiction or upon receipt of a written application for disinterment and reinterment signed by the ~~funeral director~~ person in charge of the disinterment and by any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of application, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class:

**SECTION 8.** 70.11 (13) of the statutes is amended to read:

70.11 (13) CEMETERIES. Land owned by cemetery ~~associations~~ authorities, as defined in s. 157.061 (2), and used exclusively as public burial grounds and tombs and monuments therein, and privately owned burial lots; land adjoining such burial grounds, owned and occupied exclusively by the ~~association~~ cemetery authority for cemetery purposes; personal property owned by any cemetery ~~association~~ authority and necessary for the care and management of burial grounds; burial sites and contiguous lands which are cataloged under s. 157.70 (2) (a).

**SECTION 9.** 157.061 (1) of the statutes is repealed and recreated to read:

157.061 (1) "Burial" means entombment, inurnment or interment.

**SECTION 10.** 157.061 (1g), (1m) and (1r) of the statutes are created to read:

157.061 (1g) "Business day" has the meaning given in s. 421.301 (6).

(1m) "Care fund" means one or more accounts or other investments established for the care of a cemetery.

(1r) "Cemetery association" means an association formed under s. 157.062.

**SECTION 11.** 157.061 (2) of the statutes is repealed and recreated to read:

157.061 (2) "Cemetery authority" means any person who owns or operates a cemetery specified in s. 157.065 (1).

**SECTION 12.** 157.061 (2m) of the statutes is created to read:

157.061 (2m) "Cemetery lot" means a grave or 2 or more contiguous graves and, when used in reference to the sale, purchase or ownership of a cemetery lot, includes the right to bury human remains in that cemetery lot.

**SECTION 13.** 157.061 (3) of the statutes is renumbered 157.061 (11).

**SECTION 14.** 157.061 (3) to (10) and (11g) to (17) of the statutes are created to read:

157.061 (3) "Cemetery merchandise" means goods associated with the burial of human remains, including monuments, markers, nameplates, vases and urns, and any services that are associated with supplying or delivering those goods or with the burial of human remains and that may be lawfully provided by a cemetery authority. The term does not include caskets or outer burial containers.

(4) "Dedicated" means platted for use exclusively as a cemetery and qualified for the exemption from general property taxes under s. 70.11 (13).

(5) "Department" means the department of regulation and licensing.

(6) "Endowment care cemetery" means a cemetery or portion of a cemetery that is determined to be an endowment care cemetery by the department under s. 157.13 (1) (a) and has not lost its endowment care status under s. 157.13 (6).

(7) "Family member" means a spouse or an individual related by blood, marriage or adoption within the 3rd degree of kinship as computed under s. 852.03 (2).

(7m) "Grave" means a piece of land that is used or intended to be used for an underground burial of human remains, other than a burial in an underground mausoleum space.

(8) "Human remains" means the body of a deceased individual that is in any stage of decomposition or has been cremated.

(9) "Mausoleum" means a building, structure or part of a building or structure that is used or intended to be used for the burial of human remains.

(10) "Mausoleum space" means a niche, crypt or specific place in a mausoleum that contains or is intended to contain human remains.

(11g) "Outer burial container" means any container that is placed or intended to be placed into the burial excavation of a grave and into which a casket is placed or intended to be placed at the time of burial.

(11r) "Payment of principal" means the portion of a payment for the purchase of a cemetery lot, cemetery

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merchandise or a mausoleum space that represents the principal amount owed by the purchaser for the cemetery lot, cemetery merchandise or mausoleum space, and does not include any portion of the payment that represents any taxes, finance or interest charges or insurance premiums.

(12) "Preneed sales contract" means an agreement for the sale of cemetery merchandise that is to be delivered after the date of the initial payment for the merchandise, or for the sale of an undeveloped space.

(13) "Preneed trust fund" means an account or other investment in which a portion of the proceeds received under a preneed sales contract is deposited.

(14) "Public mausoleum" means a mausoleum that holds or is intended to hold more than 10 human remains or a mausoleum in which at least one mausoleum space is offered for sale to the general public.

(15) "Religious association" means any church, synagogue or mosque or any religious society organized under ch. 187.

(16) "Sale" means a transfer for consideration of any interest in ownership, title or right to use.

(17) "Undeveloped space" means a mausoleum space that is not ready for the burial of human remains on the date of the sale of the mausoleum space.

**SECTION 15.** 157.062 (title), (1) to (5) and (6) (b) and (c) of the statutes are amended to read:

**157.062 (title) Cemetery associations; creation; powers and duties.** (1) ORGANIZATION. ~~Not less than 7 persons residing in~~ Seven or more residents of the same county may form a cemetery association. They shall meet, select a ~~chairman~~ chairperson and secretary, choose a name, fix the annual election meeting date, and elect by ballot not less than 3 nor more than 9 trustees whom the ~~chairman~~ chairperson and secretary shall immediately divide by lot into 3 classes, who shall hold their offices for ~~one~~ 1, 2 and 3 years, respectively. Within 3 days, ~~this time limit being~~ directory, the ~~chairman~~ chairperson and secretary shall certify the corporate name, the names, home addresses and business addresses of the organizers and of the trustees, and their classification, and the annual election meeting date acknowledged by them, and ~~record it in the office of the register of deeds~~ deliver the certification to the secretary of state. The association ~~shall then have~~ has the powers of a corporation.

(2) AMENDMENTS. The association may change its name, the number of trustees or the annual election meeting date by resolution at an annual meeting, or special meeting called for such purpose, by a majority vote of the members present, and by ~~recording in the office where the certificate of organization is recorded,~~ delivering to the secretary of state a copy of the resolution, with the date of adoption, certified by the president and secretary or corresponding officers. ~~The register of deeds shall~~

~~note on the margin of the original record the volume and page where the amendment is recorded.~~

(3) VALIDATION. When there shall have been a bona fide attempt to organize a cemetery association, but a failure to record a properly drawn and executed certificate of organization, and it has in good faith bought and platted grounds and conveyed cemetery lots and carried on business for over ~~twenty-five~~ 25 years, the same shall be a body corporate from the date of conveyance to it of real estate, and its transfers and other transactions are validated.

(4) (title) MEETINGS; ELECTIONS. (a) ~~Annual election~~ An annual election shall be held during the annual meeting. ~~The annual meeting, and any special meeting described in sub. (2), shall be held~~ at ~~such~~ a place in the county as chosen by the trustees ~~direct upon such~~ public notice as required by the ~~by-laws prescribe~~ bylaws. Trustees chosen after the first election shall be proprietors of cemetery lots in the cemetery, residents of the state, and hold office for ~~three~~ 3 years. Election shall be by ballot, and a plurality shall elect. Each owner of one or more cemetery lots ~~shall be is~~ entitled to one vote, and ~~such~~ one of several owners of a cemetery lot as, designated by the majority of them ~~designate~~, shall cast the vote.

(b) If the annual election is not held on the day fixed for the annual meeting, the trustees may appoint another day, not more than 60 days ~~thereafter~~ after the annual meeting, and give public notice of time and place, and if an election is not so held 5 members may apply to the judge of a court of record in the county for an order granting power to hold an election, by publishing in the county a class 2 notice, under ch. 985, of the application and the judge shall grant the application, and election shall then be held upon like notice. The terms of trustees ~~whenever elected shall expire at the same time as though elected on the regular date~~ on the date of the annual meeting in the year in which they are scheduled to expire, except that if no election is held at the annual meeting the terms expire on the date of the next election held under this paragraph.

(5) TRUSTEES; DUTIES, REPORT. The trustees may fill vacancies for the unexpired term. One shall be chosen president, and they shall appoint a secretary and treasurer, and may require security of the treasurer. The trustees shall manage the affairs and property of the association, and control and beautify the cemetery ~~and beautify the same, and may establish regulations respecting it.~~ At each annual meeting the ~~for those purposes.~~ The trustees shall make a and file written report of their transactions ~~and the condition of the association, giving a particular account of receipts and expenditures~~ reports as required in s. 157.62 (1) and (2).

(6) (b) If an association ~~which~~ that has been dissolved under par. (a), or any group ~~which~~ that was never properly organized as a cemetery association, has cemetery

grounds and interments remain therein human remains are buried in the cemetery grounds, 5 or more members, or persons interested as determined by order of the circuit judge under par. (c), may publish a class 3 notice, under ch. 985, in the municipality in which the cemetery is located, of the time, place and object of the meeting, assemble and reorganize by the election of trustees, ~~the same as the regular time~~, and divide them into classes as provided in sub. (1), the commencement of the terms to be computed from the next annual election meeting date, ~~and the~~. The secretary shall enter the proceedings of such the meeting shall be entered by the secretary on the records, and thereby the. The association shall be is reorganized upon delivery of a copy of the proceedings to the secretary of state. Upon such reorganization, the title to the cemetery grounds, trust funds and all other property of the association or group shall vest vests in the reorganized association, under the control of the trustees. The reorganized association may continue the name of the dissolved association or may adopt a new name.

(c) If an association is dissolved under par. (a) or any group has never been properly organized as cemetery association, and there are fewer than 5 members living or residing in the county where the cemetery is located, the circuit judge for the county shall upon the petition of any person interested, make an order determining who are persons interested in the cemetery. Any adult person who owns an interest in any cemetery lot in the cemetery, who is related to any person buried in the cemetery, or who is a descendant, brother, sister, nephew, niece or surviving spouse of a member of the dissolved association, is an interested person. The circuit judge may make the order upon evidence he or she deems sufficient, with or without hearing. The order need not contain the names of all persons interested, but shall contain the names of at least 5 such persons.

**SECTION 16.** 157.062 (6m) of the statutes is created to read:

157.062 (6m) FORMS. The secretary of state may prescribe and furnish forms for providing the information required under subs. (1) to (6).

**SECTION 17.** 157.062 (8) (b) 3. and 4. of the statutes, as created by 1989 Wisconsin Act 31, are amended to read:

157.062 (8) (b) 3. The liability of a trustee or officer arising from a breach of, or failure to perform, any duty relating to the receipt, handling, investment or other use of perpetual care or maintenance funds under s. 157.11 (9) or 157.12 (3) or any other funds made in trust.

4. The liability of a trustee or officer under s. 157.12 (4) for violating s. 157.12.

**SECTION 18.** 157.063 (title) of the statutes is repealed.

**SECTION 18m.** 157.063 (1) of the statutes is renumbered 157.115 (1) (b) 2. and amended to read:

157.115 (1) (b) 2. When a cemetery association authority abandons or fails to manage or care for the cemetery for a period of 5 or more years, ~~and is not reorganized in the meantime~~, the municipality ~~wherein in which~~ the cemetery is ~~becomes vested with the~~ located shall take control of the property, and shall cemetery, manage and care for it, the cemetery and collect and manage all trust funds connected ~~therewith received~~ with the cemetery other than trust funds received by a will.

**SECTION 19.** 157.063 (2) and (3) of the statutes are renumbered 157.064 (5) and (6) and amended to read:

157.064 (5) Whenever a cemetery association shall vote votes to convey cemetery property and all trust funds pertaining ~~thereto~~ to the cemetery property to a city, village or town, the trustees of the association shall have the power to transfer ~~such the~~ property upon the acceptance ~~thereof~~ of the transfer by resolution of the governing body of the city, village or town. A conveyance under this subsection is subject to s. 157.08 (2).

(6) Whenever the majority of the members of a cemetery association, or of a religious association authorized to hold lands for cemetery purposes, present at an annual meeting or special meeting called for such purpose vote to convey all of the cemetery association's or religious association's cemetery property, trust funds and other property ~~of the association~~ used for cemetery purposes to another cemetery association or religious association, the trustees of the association shall transfer ~~such the~~ property upon the acceptance ~~thereof~~ of the transfer by the other association by affirmative vote of a majority of its members present at an annual meeting or special meeting called for ~~such that~~ purpose. Upon such acceptance, the title to ~~all the~~ cemetery property, trust funds and other property of the transferring association shall vest vests in the accepting association under the control of the trustees of the accepting association. A conveyance under this subsection is subject to s. 157.08 (2). This subsection does not apply to a religious society organized under ch. 187.

**SECTION 20.** 157.063 (4) of the statutes is renumbered 157.115 (1) (c) and amended to read:

157.115 (1) (c) Whenever any cemetery in a town is falling into disuse, or is abandoned or neglected, and by reason of the removal or death of the persons interested in its upkeep there exists no association or group with authority to transfer ~~such ownership and operation of the~~ cemetery to the town, the town board, at the expense of the town, shall take charge of the cemetery and manage and care for it, and if the town board fails to ~~do so, having notice thereof~~ take charge of the cemetery, the circuit judge may upon petition by 6 or more persons interested in the upkeep of the cemetery order its transfer to the town, including the transfer of all assets. Cemeteries so transferred shall be managed as provided for other town cemeteries.



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**SECTION 21.** 157.064 (title) of the statutes is amended to read:

**157.064 (title) Cemetery associations and religious associations; holding property; change of ownership.**

**SECTION 22.** 157.064 (2) of the statutes is amended to read:

157.064 (2) A cemetery or religious association incorporated in this state and having a cemetery in or near a 1st or 2nd class city and any cemetery described under s. 157.065 (3m) (d) may acquire by gift or purchase up to 30 acres of adjoining lands for cemetery purposes, and may pay for it wholly or partly from ~~the~~ its cemetery lot sales.

**SECTION 23.** 157.064 (3) of the statutes is amended to read:

157.064 (3) When it is necessary to enlarge a cemetery owned by a cemetery or religious association, and adjoining lands cannot be acquired or can be acquired only at an exorbitant price, application may be made in writing to the circuit judge by 12 or more resident freeholders of the municipality in which the cemetery is located describing the land and setting forth the facts and the price asked, whereupon the judge shall appoint 3 resident freeholders of the county, but not of ~~such~~ the municipality, to appraise the damages of each owner, not to exceed the price asked, but, except in cities or incorporated villages, no lands shall may be taken within ~~20 rods~~ 330 feet of a residence owned by the occupant without ~~his~~ the occupant's written consent. The appraisers shall hear all parties upon 10 days' notice and file a report in writing with the judge within 10 days after determination. Upon payment into court of the amount appraised, the lands shall be taken. Either party may appeal as provided in s. 32.06 (10). The commissioners shall be paid, by the party seeking to take the land, \$3 for each day actually employed and 6 cents for each mile necessarily traveled.

**SECTION 24.** 157.064 (7) of the statutes is created to read:

157.064 (7) Not more than 30 days after a transfer under sub. (6), the transferring association shall notify the secretary of state in writing of the transfer, including the name and address of the accepting association or its treasurer. The secretary of state may prescribe and furnish forms for providing the information required under this subsection.

**SECTION 25.** 157.065 (title) and (1) (b) 6. of the statutes are amended to read:

**157.065 (title) Location and ownership of cemeteries.**

(1) (b) 6. A corporation organized under ch. 180 or 181 ~~operating a cemetery on April 30, 1980.~~

**SECTION 26.** 157.065 (1) (b) 2. of the statutes, as affected by 1989 Wisconsin Act 43, is amended to read:

157.065 (1) (b) 2. Any ~~church, synagogue or mosque or any religious society organized under ch. 187~~ association;

**SECTION 27.** 157.065 (2) (a) 2., 3. and 4. (intro.), (3) and (3m) (a) of the statutes are amended to read:

157.065 (2) (a) 2. Outside a recorded plat or recorded addition to a plat of any city or village if the cemetery is within ~~200 rods~~ 3,300 feet of an inhabited dwelling that is located within a recorded plat or addition, unless the city or village consents;

3. Within ~~15 rods~~ 250 feet of any habitable dwelling, publicly owned building or school, unless the cemetery is establishing an extension on property it has owned continually since June 18, 1929; or

4. (intro.) Within ~~200 rods~~ 3,300 feet of any of the following state facilities, without the consent of the state:

(3) Any incorporated college of a religious order in a 4th class city may establish a private cemetery within the city on land the college owns to ~~inter~~ bury members of the religious order, if the common council consents and if each person owning a private building within ~~50 rods~~ 825 feet of the proposed cemetery consents.

(3m) (a) Any cemetery in a village may enlarge with the consent of the village board and of the owners of each building within ~~15 rods~~ 250 feet of the addition.

**SECTION 28.** 157.065 (4) of the statutes is renumbered 157.115 (1) (a).

**SECTION 29.** 157.07 of the statutes is renumbered 157.07 (1) and amended to read:

157.07 (1) ~~The board of trustees~~ A cemetery authority shall cause to be surveyed and platted by a land surveyor registered in this state ~~such~~ those portions of the lands ~~as may~~ that are from time to time be required for burial, into cemetery lots, drives and walks, and record a plat or map thereof of the land in the office of the register of deeds. ~~No such~~ The plat or map shall may not be recorded unless laid out and platted to the satisfaction of the county board of ~~such~~ the county, and the town board of the town in which ~~such~~ the land is situated, or, if ~~such~~ the land is situated within a 1st class city ~~of the first class~~, then only by the common council of ~~such~~ that city.

(2) The plat or map shall show the exact location of the tract being subdivided with reference to a corner or corners established in the United States public land survey by bearings and distances, and shall show a small scale drawing of the section or government subdivision of the section in which the cemetery plat is situated, with the cemetery plat indicated ~~thereon~~. The plat or map shall include the certificate of the surveyor containing the name of the ~~board of trustees~~ cemetery authority, the date of the survey, the surveyor's stamp or seal and signature and the surveyor's statement that the survey is true to the surveyor's best knowledge and belief.

(3) The plat or map shall be made on one or more sheets of durable white paper ~~so~~ pasted on muslin so that they cannot be detached ~~therefrom~~. To facilitate the binding of ~~such~~ the sheets into volumes, as provided by s. 236.25, ~~such~~ the sheets shall be of uniform width of 22 inches and length of 30 inches. When more than one

sheet is used for any one plat or map, they shall be numbered consecutively and each sheet shall contain a notation showing the whole number of sheets in the plat, and its relation to the other sheets. ~~Such~~ The sheets may be provided by the county through the register of deeds on such terms as determined by the county board ~~shall determine~~. The surveyor shall leave a binding margin of 1 1/2 inches on the left side of the 30-inch length and a one-inch margin on all other sides.

(4) ~~The board of trustees~~ cemetery authority shall cause the ~~same~~ plat or map to be recorded within 30 days of the date of ~~such~~ its approval, together with the evidence of the town and county board's or common council's approval, which shall be a copy of the resolution adopted by ~~such~~ the county board and by ~~such~~ the town board, or by ~~such~~ the common council, certified by the county clerk and the town clerk, respectively, or city clerk, and affixed to ~~such~~ the map or plat. For failure to do so, the plat shall be void ~~and of no effect and each trustee of an association shall forfeit \$25 to the county or city.~~

**SECTION 30.** 157.07 (6) of the statutes is created to read:

157.07 (6) This section does not apply to a religious society organized under ch. 187.

**SECTION 31.** 157.08 (1) of the statutes is amended to read:

157.08 (1) After the plat or map is so recorded under s. 157.07 and, if the land is dedicated on or after the effective date of this subsection .... [revisor inserts date], the cemetery authority receives a written determination under s. 157.13 (1) (a) that the land qualifies as an endowment care cemetery, the board cemetery authority may sell and convey platted cemetery lots, expressly restricting the use to burials, and upon such other terms, conditions and restrictions as the board directs. Conveyances shall be signed by the chief officer of the board cemetery authority, and by the secretary or clerk, and before of the cemetery authority, if any. Before delivering the conveyance to the grantee, the secretary or clerk cemetery authority shall enter ~~in a book on records~~ kept for that purpose, the date and consideration and the name and residence of the grantee. The conveyances may be recorded with the register of deeds.

**SECTION 32.** 157.08 (2) of the statutes is repealed and recreated to read:

157.08 (2) (a) If a cemetery lot or mausoleum space is sold by a cemetery authority and used or intended to be used for the burial of the human remains of the purchaser or the purchaser's family members, the purchaser's interests in the ownership of, title to or right to use the cemetery lot or mausoleum space are not affected or limited by any claims or liens of other persons against the cemetery authority.

(b) Before a cemetery authority sells or encumbers any cemetery land, except for a sale described in par. (a),

the cemetery authority shall notify the department in writing of the proposed sale or encumbrance. If within 60 days after the department is notified of the proposed sale or encumbrance the department notifies the cemetery authority in writing that the department objects to the sale or encumbrance the cemetery authority may not sell or encumber the cemetery land unless the department subsequently notifies the cemetery authority in writing that the objection is withdrawn. The department may object to a sale or encumbrance only if it determines that the cemetery authority will not be financially solvent or that the rights and interests of owners of cemetery lots and mausoleum spaces will not be adequately protected if the sale or encumbrance occurs. The department may, before the expiration of the 60-day period, notify the cemetery authority in writing that the department approves of the sale or encumbrance. Upon receipt of the department's written approval, the cemetery authority may sell or encumber the cemetery land and is released of any liability under this paragraph. The department shall make every effort to make determinations under this paragraph in an expeditious manner.

(c) A preneed sales contract is enforceable against the successor in interest of the cemetery authority that made the sale.

(d) Any cemetery authority that sells a cemetery lot on or after the effective date of this paragraph .... [revisor inserts date], shall deposit 15% of each payment of principal into a care fund within 30 days after the last day of the month in which the payment is received, except as provided in ss. 157.11 (7) (d) and 157.115 (2) (f). The total amount deposited must equal 15% of the total amount of all payments of principal that have been received, but not less than \$25.

**SECTION 33.** 157.08 (3) of the statutes is amended to read:

157.08 (3) ~~The board~~ A cemetery authority may sell its personal property at its discretion.

**SECTION 34.** 157.08 (4) of the statutes is renumbered 157.07 (5) and amended to read:

157.07 (5) ~~The board~~ cemetery authority may vacate or replat any portion of its cemetery upon the filing of a verified petition by a majority of the trustees with the circuit court describing the portion and setting forth the facts and reasons therefor. The court shall fix a time for hearing and direct publication of a class 3 notice, under ch. 985, and the court shall order a copy of the notice to be mailed to at least one interested person, as to each separate parcel involved, whose post-office address is known or can be ascertained with reasonable diligence, at least 20 days before such hearing. If the court finds that the proposed vacating or replating is for the best interest of the ~~association~~ cemetery authority and that the rights of none to whom cemetery lots have been conveyed will be injured, it shall enter an order reciting the jurisdictional facts and its findings and authorizing the vacating

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or replatting of the lands of the cemetery. The order shall be effective when recorded by the register of deeds.

**SECTION 35.** 157.08 (5) of the statutes is created to read:

157.08 (5) Subsections (1) and (2) (b) do not apply, but subs. (2) (a), (c) and (d) and (3) do apply, to a religious society organized under ch. 187.

**SECTION 36.** 157.09 of the statutes is amended to read:

**157.09 Use of proceeds.** ~~The~~ Except as otherwise provided in this subchapter, the proceeds of sales ~~shall of~~ cemetery lots and mausoleum spaces may be used only to apply on the purchase of the grounds, the care and improvement of the cemetery and avenues leading ~~thereto~~ to the cemetery, and operating expenses.

**SECTION 37.** 157.10 of the statutes is amended to read:

**157.10 (title) Alienation and use of cemetery lots.** While any person is buried ~~therein~~ in a cemetery lot, the cemetery lot shall be inalienable, without the consent of a majority of the board cemetery authority, and on the death of the owner, ownership of the cemetery lot shall descend to his the owner's heirs; but any one or more of such heirs may convey to any other heir his or her interest therein in the cemetery lot. No corpse shall human remains may be interred buried in a cemetery lot except the ~~corpse~~ human remains of one having an interest ~~therein in the cemetery lot~~, or a relative, or the husband, or wife of such person, or his or her relative, except by the consent of all persons having an interest in the cemetery lot.

**SECTION 38.** 157.11 (1) to (5) of the statutes are amended to read:

157.11 (1) FENCE; FUNERAL BUILDING. ~~The board~~ A cemetery authority may enclose the grounds of its cemetery with a suitable fence, and may erect thereon a building for funeral services.

(2) REGULATIONS. ~~The board~~ cemetery authority may make regulations for management and care of the cemetery. No person ~~shall~~ may plant, in the cemetery, trees or shrubs, nor erect wooden fences or structures or offensive or dangerous structures or monuments, nor maintain them if planted or erected in violation of the regulations; ~~and the board. The cemetery authority~~ may require any person owning or controlling a cemetery lot to do anything necessary to comply with the regulations by giving reasonable personal notice in writing if ~~he~~ the person is a resident of the ~~county~~ state, otherwise by publishing a class 3 notice, under ch. 985, in the county; ~~and if he. If the person~~ fails to comply within 20 days thereafter, the board cemetery authority may cause it to be done and recover from ~~him~~ the person the expense. The ~~board~~ cemetery authority may also impose a forfeiture not exceeding \$10 for violation of the regulations posted in 3 conspicuous places in the cemetery, recoverable under ch. 778. ~~Each member of the board and the superinten-~~

~~dent or sexton~~ employe and agent of the cemetery authority shall have constable powers in enforcing the regulations.

(3) CONTRACTS. ~~The trustees of a cemetery association~~ authority may contract with ~~individuals~~ persons who own or are interested in a cemetery lot for its care; ~~the~~ The contract shall be in writing, may provide that the cemetery lot shall be forever exempt from taxes, assessments or charges for its care and the care and preservation of the grounds, shall express the duty of the ~~association~~ cemetery authority, be recorded in a book kept for that purpose, and be effective when the consideration is paid or secured.

(4) (title) ASSOCIATIONS OF RELATIVES. Persons owning a cemetery lot or having relatives buried in a cemetery may incorporate an association to hold and occupy a previously constituted cemetery, and to preserve and care for the same; ~~s. Section~~ Section 157.062 shall apply to ~~such~~ the association. Nothing in this ~~section~~ subsection shall give rights of burial. A municipality may lease a municipal cemetery to a cemetery association for preservation and may contract to permit the association to use cemetery funds therefor. Such leases and contracts may be revoked at will by the municipal board.

(5) SUM REQUIRED. ~~The board~~ cemetery authority shall annually fix the sum necessary, ~~annually~~ for the care of cemetery lots and care and improvement of the cemetery, or to produce a sufficient income ~~therefor~~ for those purposes.

**SECTION 39.** 157.11 (7) of the statutes is amended to read:

157.11 (7) ASSESSMENTS. (a) ~~The board~~ cemetery authority may annually assess upon the cemetery lots amounts not to exceed the amounts reasonably required for actual and necessary costs for cleaning and care of cemetery lots and care and improvement of the cemetery. Notice of the assessment, along with a copy of this section, shall be mailed ~~forthwith~~ to each lot owner or person having charge of a cemetery lot, at ~~his or her~~ the owner's or person's last-known post-office address, directing payment to the ~~treasurer~~ cemetery authority within 30 days and specifying that such assessments ~~shall be~~ are a personal liability of the owner or person.

(b) ~~The board or any organization having a cemetery under its control~~ authority may fix and determine the sum reasonably necessary for perpetual the care of the grave or cemetery lot in reasonable and uniform amounts, which amounts shall be subject to the approval of the court, and may collect ~~the same~~ those amounts as part of the funeral expenses.

(c) Before ordering distribution of the estate of a deceased person, the court shall order paid any assessment under this section, or the sum so fixed for the care of the cemetery lot or grave of the deceased.

(d) When uniform care of a cemetery lot has been given for ~~two~~ 2 consecutive years or more, for which

assessments are unpaid, after notice as provided in sub. (2), right to ~~interment~~ burial is forfeited until delinquent assessments are paid. When uniform care has been given for ~~five~~ 5 consecutive years or more and the assessments are unpaid, upon like notice, title to all unoccupied ~~part~~ parts of the cemetery lot shall pass to the ~~association or municipality~~ cemetery authority and may be sold, the ~~proceeds~~ payment of principal to be a fund for perpetual ~~deposited into the care of the occupied portion~~ fund. Before depositing the payment of principal into the care fund, the cemetery authority may retain an amount necessary to cover the cemetery authority's administrative and other expenses related to the sale, but the amount retained may not exceed 50% of the proceeds.

**SECTION 40.** 157.11 (8) of the statutes is amended to read:

157.11 (8) GIFTS. The ~~corporation~~ cemetery authority shall take, hold and use such any gifts, or the income and proceeds thereof of any gifts, as may be made in trust or otherwise, for the improvement, maintenance, repair, preservation or ornamentation of any cemetery lot or structure in the cemetery, according to the terms of the gift, and regulations by the ~~board~~ cemetery authority.

**SECTION 41.** 157.11 (9) (title), (a) and (b) of the statutes are amended to read:

157.11 (9) (title) HANDLING OF PROPERTY RECEIVED AS GIFT. (a) ~~Before the trustees of an association receive a~~ cemetery authority receives a gift, the surety bonds of the ~~secretary and treasurer~~ cemetery authority shall be increased to cover such amount if it does not then do so. If the bonds are not filed, or ~~any officer~~ the cemetery authority fails to do anything required by this subsection, the judge may appoint a trustee, and all property and money so given and evidences of title and securities shall be delivered to ~~him~~ the trustee.

(b) Except as ~~hereinafter~~ hereinafter provided in respect of s. 66.04 (2) (c), ~~care funds for the perpetual care of public mausoleums and columbariums, money received by an association for perpetual care shall be invested as provided in ch. 881, or in such other manner as may be approved either by the circuit judge of the county in which the principal office of the association is located, or the circuit judge of the county in which the cemetery is located s. 157.19, or it~~ the funds may be deposited with the treasurer of the county or city in which such the cemetery is located, and the governing body of such the county or city may determine to accept such deposits. In the case of all ~~deposits hitherto or hereafter~~ funds deposited with a city or county, or previously deposited with a village, there shall be paid to ~~said association~~ the cemetery authority annually interest on ~~sums~~ funds so deposited of not less than 2% per year. The governing body of any city or county, or any village or town in the case of previous deposits, may determine to return all or a part of any ~~sum~~ funds deposited by an ~~association~~ a cemetery authority, and ~~such association~~ that cemetery authority shall accept

~~such sum~~ the returned funds within 30 days after receiving written notice of ~~such that~~ that action. If ~~such association~~ the cemetery authority is dissolved or becomes inoperative ~~such, the~~ the county or city shall use the interest on ~~such fund~~ the funds for the care and upkeep of ~~such the~~ the cemetery. Deposit shall be made and the income paid over from time to time, not less frequently than once each year, and receipts in triplicate shall be given, one filed with the county clerk, one with the ~~association~~ cemetery authority and one given to the person making the deposit. Deposits shall be in the amount of \$5 or a multiple thereof. Records and receipts shall specify the cemetery lot for the care of which the deposit is made. Reports of money received for ~~perpetual care and of money and property received as gifts~~ shall be made annually by the ~~trustees of such association to the circuit judge of the county in which the principal office of the association is located, or the circuit judge of the county in which the cemetery is located on July 1 of each year as provided in s. 157.62 (2).~~ All funds received by an ~~association~~ a cemetery authority for perpetual care and now held by the treasurer or trustees of ~~such association~~ the cemetery authority may be transferred to said the county or city treasurer. ~~Failure to file such report for 60 days shall subject such trustees to a forfeiture of not less than \$10 nor more than \$20, to be enforced as provided in ch. 778. Such trustees may also be cited to file such report by such judge and the expense of serving the citation shall be paid by such trustees and disobedience of such citation may be enforced as a contempt. This paragraph shall apply to all organizations that maintain cemeteries except municipalities.~~

**SECTION 42.** 157.11 (9) (d) of the statutes is repealed.

**SECTION 43.** 157.11 (9) (e) and (f) of the statutes are amended to read:

157.11 (9) (e) Anyone having in custody or control any cemetery care trust fund received other than by testament, shall, upon demand, deliver it to the cemetery ~~corporation~~ authority to be handled as provided in this section.

(f) If any money or property is not turned over when required by this section, or default occurs under a bond, the district attorney, ~~when directed by the circuit judge upon the request of the department of regulation and licensing,~~ shall bring action to recover.

**SECTION 44.** 157.11 (10) of the statutes is created to read:

157.11 (10) EXEMPTION FOR RELIGIOUS SOCIETIES. This section does not apply to a religious society organized under ch. 187.

**SECTION 45.** 157.115 of the statutes is created to read:

**157.115 Abandonment of cemeteries and cemetery lots.** (1) ABANDONMENT OF CEMETERIES.

(b) 1. When a cemetery authority fails to care for the cemetery for a period of one or more years, the municipality in which the cemetery is located may take control of the cemetery, manage and care for the cemetery and



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collect and manage all trust funds connected with the cemetery other than trust funds received by a will.

(2) ABANDONMENT OF CEMETERY LOTS. (a) In this subsection:

1. “Abandoned lot” means one or more graves of a cemetery lot that is not owned by the cemetery authority of the cemetery in which the cemetery lot is located if those graves have not been used for the burial of human remains and if, according to the records of the cemetery authority, all of the following apply during the 50-year period immediately preceding the date on which the notice requirement under par. (c) is satisfied:

a. No owner has transferred any ownership interest in the cemetery lot to any other person.

b. No owner has purchased or sold another cemetery lot or a mausoleum space in the cemetery.

c. No other grave in that cemetery lot or adjoining cemetery lot or adjoining mausoleum space that is owned or partially owned by an owner has been used for the burial of human remains.

d. No grave marker, monument or other memorial has been installed on the cemetery lot.

e. No grave marker, monument or other memorial has been installed on any other cemetery lot, in the same cemetery, that is owned or partially owned by an owner.

f. No nameplate, monument or other memorial has been installed to identify the human remains that are buried within a mausoleum space, in the same cemetery, that is owned or partially owned by an owner.

g. The cemetery authority has not been contacted by an owner or assignee or received any other notice or evidence to suggest that an owner or assignee intends to use the cemetery lot for a future burial of human remains.

2. “Assignee” means a person who has been assigned in the deceased owner’s will or in any other legally binding written agreement, or who is entitled to receive under ch. 852, an ownership interest in the abandoned cemetery lot.

3. “Owner” means a person who, according to the records of the cemetery authority of the cemetery in which an abandoned cemetery lot is located, owns or partially owns the abandoned cemetery lot.

(b) No cemetery authority may resell an abandoned cemetery lot unless the cemetery authority complies with the requirements in this subsection.

(c) The cemetery authority shall mail to each owner, at each owner’s last-known address, a notice of the cemetery authority’s intent to resell the abandoned cemetery lot as provided in this subsection. If an owner is buried in the cemetery in which the abandoned cemetery lot is located or if the cemetery authority has any other evidence that reasonably supports a determination by the cemetery authority that the owner is deceased, no notice is required under this paragraph.

(d) If no notice is required under par. (c) or if, within 60 days after notice is mailed under par. (c), no owner or

assignee contacts the cemetery authority to express an intent to use the abandoned cemetery lot for a future burial of human remains, the cemetery authority shall publish in a newspaper of general circulation in the county in which the abandoned lot is located, a class 3 notice under ch. 985 that includes all of the following:

1. The location of the abandoned lot.

2. The name and last-known address of each owner.

3. A statement that, unless an owner or assignee contacts the cemetery authority within the period specified in par. (e), the cemetery authority intends to resell the abandoned lot as provided in this subsection.

(e) If within 60 days after notice is published under par. (c) no owner or assignee contacts the cemetery authority to express an intent to use the abandoned lot for a future burial of human remains, the cemetery authority shall bring an action in the circuit court of the county in which the abandoned lot is located for a judgment that the cemetery lot is an abandoned lot and an order transferring ownership of the abandoned lot to the cemetery authority.

(f) If within one year after the circuit court enters a judgment and order under par. (e) no owner or assignee contacts the cemetery authority to express an intent to use the abandoned lot for a future burial of human remains, the cemetery authority may resell the abandoned lot, except as provided in par. (g). The payment of principal shall be deposited into the care fund. Before depositing the payment of principal into the care fund, the cemetery authority may retain an amount necessary to cover the cemetery authority’s administrative and other expenses related to the sale, but the amount retained may not exceed 50% of the proceeds.

(g) If at any time before an abandoned lot is resold under par. (f) an owner or assignee contacts the cemetery authority to express an intent to use the abandoned lot for a future burial of human remains, the authority may not resell the abandoned lot, and ownership of the abandoned lot shall be transferred to the owner or assignee. The cemetery authority shall pay all costs of transferring ownership under this paragraph.

(h) Nothing in this subsection prohibits a cemetery authority from seeking the authority to resell more than one abandoned lot by publishing a single class 3 notice under par. (d) or bringing a single action under par. (e) that applies to all of the abandoned lots for which such authority is sought.

**SECTION 46.** 157.12 (title) of the statutes is amended to read:

**157.12 (title) Mausoleums and crematoriums.**

**SECTION 47.** 157.12 (1) of the statutes is repealed and recreated to read:

157.12 (1) DEFINITION. Notwithstanding s. 157.061 (5), in this section, “department” means the department of industry, labor and human relations.

**SECTION 48.** 157.12 (2) (title), (a) and (b) of the statutes are amended to read:

157.12 (2) (title) CONSTRUCTION OF MAUSOLEUMS. (a) Any person who constructs a ~~vault~~ mausoleum or converts a building or other structure to a vault mausoleum shall comply with the rules of the department and shall receive department approval in writing of the plans and specifications prior to construction or conversion. No person may modify plans or specifications which have been approved under this paragraph without approval in writing from the department, unless such modifications are cosmetic in nature. The department ~~may adopt~~ shall promulgate rules providing reasonable requirements governing the location, material and construction of any ~~vault~~ mausoleum, in accordance with the requirements in par. (d). Any municipality may enact ordinances governing ~~vaults~~ mausoleums at least as stringent as this section.

(b) The department shall supervise construction of any public ~~or community vault~~ mausoleum and conversion of any building to a public ~~or community vault~~. ~~No person may modify departmental construction requirements without written approval of the department. No mausoleum. Within 30 days after receiving written notice from the cemetery authority that the construction or conversion has been completed, the department shall inspect the public mausoleum and provide the cemetery authority with a written certification as to whether the construction or conversion complies with approved plans. If the department determines that, except for certain minor defects, the construction or conversion complies with the approved plans, the department may provide the cemetery authority with a written temporary certification of compliance that is contingent on the correction of those minor defects. A temporary certification is valid for a period designated by the department, not to exceed 6 months. No person may operate sell a mausoleum space, except an undeveloped space that is sold in accordance with s. 440.92, or bury human remains in a public or community vault mausoleum unless a care fund has been established for the mausoleum under sub. (3) and the department certifies in writing that construction or conversion complied with approved plans and that a maintenance fund under sub. (3) exists has provided the cemetery authority with a certification or a temporary certification under this paragraph. If a cemetery authority that has been provided with a temporary certification notifies the department in writing before the date on which the temporary certification expires that the defects in the construction or conversion of the public mausoleum have been corrected, the department shall, within 30 days after receiving the notice, reinspect the public mausoleum and provide the cemetery authority with a written certification as to whether the construction or conversion complies with the approved plans. If a cemetery authority that has been provided with a temporary certification does not receive a written certification from the department before the date on which the temporary~~

certification expires that the construction or conversion complies with the approved plans, then, beginning on the date on which the certification expires, no person may sell a mausoleum space, except an undeveloped space that is sold in accordance with s. 440.92, or bury human remains in the public mausoleum until the defects are corrected and the department subsequently inspects the public mausoleum and provides the cemetery authority with a certification that the construction or conversion complies with the approved plans. The department may charge a reasonable fee to the cemetery authority for each inspection and certification provided under this paragraph if the inspection and certification are provided within the applicable 30-day period prescribed under this paragraph.

**SECTION 49.** 157.12 (2) (bm) of the statutes is created to read:

157.12 (2) (bm) If a municipality in which a mausoleum is located requires the owner or operator of the mausoleum to obtain from the municipality a permit for the use or occupancy of the mausoleum, the municipality shall issue that permit to the owner or operator if the owner or operator has been provided with a certification or temporary certification for the mausoleum under par. (b). The permit shall be valid for a period equal to or longer than the period for which the certification or temporary certification under par. (b) is valid.

**SECTION 50.** 157.12 (2) (c) of the statutes is amended to read:

157.12 (2) (c) No person may establish or use a public ~~or community vault~~ mausoleum unless the ~~vault~~ mausoleum is located inside a cemetery of 20 acres or more that has been in existence for 10 years or more.

**SECTION 51.** 157.12 (2) (d) of the statutes is repealed and recreated to read:

157.12 (2) (d) A mausoleum shall be constructed to last as long as possible, taking into consideration the technology and economics applicable to mausoleum construction at the time of construction.

**SECTION 52.** 157.12 (3) (title) and (a) (intro.) and 1 of the statutes are amended to read:

157.12 (3) (title) CARE FUND. (a) (intro.) Any person who operates a public ~~or community vault~~ mausoleum shall establish a care fund for the perpetual maintenance of the vault, in compliance with either subd. 1 or 2, as follows:

1. If the ~~vault~~ mausoleum has been in existence since June 15, 1933, and is covered by the ~~perpetual~~ care fund of the cemetery in which the ~~vault~~ mausoleum is located, the cemetery shall deposit at least 15% of the ~~proceeds~~ each payment of principal received by from the sale of cemetery lots a mausoleum space into the care fund, until the care fund equals 10% of the cost of constructing the vault mausoleum.

**SECTION 53.** 157.12 (3) (a) 2. of the statutes is amended to read:

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157.12 (3) (a) 2. Except as provided in subd. 1, the operator of the vault mausoleum shall apply deposit at least 25% of all proceeds each payment of principal received from sales the sale of a mausoleum rooms or crypts and columbarium niches space into the care fund, until the care fund equals 25% of the cost of constructing the vault. ~~The municipality in which the vault is located may require a larger fund mausoleum.~~

**SECTION 54.** 157.12 (3) (a) 3. of the statutes is created to read:

157.12 (3) (a) 3. The operator shall make deposits required under subds. 1 and 2 within 30 days after the last day of the month in which the payment is received. The municipality in which the mausoleum is located may, by ordinance, require a larger fund, but only if the department notifies the municipality in writing that the department approves of the requirement. The department may promulgate rules establishing uniform standards for approvals under this subdivision.

**SECTION 55.** 157.12 (3) (b) of the statutes is amended to read:

157.12 (3) (b) The cemetery's treasurer is the custodian of the fund. The treasurer shall file with the cemetery, at the cemetery's expense, a bond plus with sureties approved by the county clerk department of regulation and licensing to indemnify the cemetery against loss if the treasurer fails to maintain the fund. No indemnity is required if the terms of sale of ~~the vault~~ a mausoleum space require the purchaser to pay directly to a trust company in the state, designated by the cemetery as custodian of the fund. The fund shall be invested as provided in ~~ch. 884 s. 157.19.~~ Income from investment may be used only to maintain the vault mausoleum, except that if the amount of income exceeds the amount necessary to properly maintain the mausoleum the excess amount may be used to maintain any portion of the cemetery.

**SECTION 56.** 157.12 (4) of the statutes is repealed and recreated to read:

157.12 (4) CONSTRUCTION OF CREMATORIUMS. (a) Any person who constructs a crematorium or converts a building or other structure to a crematorium shall comply with the rules of the department and shall receive department approval in writing of the plans and specifications prior to construction or conversion. The department may promulgate rules governing the location, material and construction of any crematorium. Any municipality may enact ordinances governing crematoriums at least as stringent as this subsection.

(b) The department shall supervise construction of any crematorium and conversion of any building or other structure to a crematorium. No person may modify departmental construction or conversion requirements without written approval of the department. No person may operate a crematorium unless the department certifies in writing that construction or conversion complied with approved plans.

**SECTION 57.** 157.125 of the statutes is renumbered 157.125 (1) and amended to read:

157.125 (1) ~~Where~~ If a trust is created for the ~~perpetual~~ care of a burial place or grave but no trustee is named in the will to administer the trust, the circuit court having jurisdiction ~~thereof~~ may name the county treasurer of the county in which the burial place or grave is situated as ~~such~~ trustee, except as provided in sub. (2). If not contrary to the terms of the trust, the county treasurer may contract with the person in charge of the burial place or grave for its care and pay to ~~such that~~ that person the income from the trust property or ~~such the~~ the part of the income that may be necessary for ~~such that~~ that purpose, and if there is no person in charge of the burial place or grave then ~~such the~~ the income shall be paid to the city, village or town, in which the burial place or grave is situated, and for the purposes of this ~~section~~ subsection the governing body of ~~such that~~ that municipality shall ~~have~~ has the duty of ~~such care~~ caring for the burial place or grave to the extent of money received for ~~such that~~ that purpose. The county treasurer shall annually render an account to the circuit court as provided in ch. 701 and the person or municipality receiving money for such care shall also render an annual accounting to the circuit court ~~showing the amount received and in detail the purposes for which expended and the department as provided in s. 157.62 (2) (b) 3. to 7.~~

**SECTION 58.** 157.125 (2) of the statutes is created to read:

157.125 (2) If the burial place or grave is located in a cemetery owned and operated by a religious society organized under ch. 187, the court shall name the religious society as the trustee unless the religious society petitions the court to name the county treasurer as the trustee.

**SECTION 59.** 157.128 of the statutes is created to read:

**157.128 Cemeteries established on or after the effective date of this section .... [revisor inserts date]; minimum acreage and endowment care status required.** (1) (a) Except as provided in par. (b), no cemetery may be dedicated on or after the effective date of this paragraph .... [revisor inserts date], unless the cemetery consists of at least 20 contiguous acres.

(b) A cemetery consisting of less than 20 contiguous acres may be dedicated on or after the effective date of this paragraph .... [revisor inserts date], if all of the following apply:

1. The cemetery is owned by a religious association.
2. The religious association is responsible for all liabilities of the cemetery.
3. The total acreage of all other cemeteries owned by the religious association exceeds 20 acres.

(2) No person may sell a cemetery lot or mausoleum space located in, or cemetery merchandise to be used or placed in, a cemetery or portion of a cemetery that is dedicated on or after the effective date of this subsection .... [revisor inserts date], unless the cemetery is an endow-

ment care cemetery or a cemetery for which a certification under s. 157.63 is effective.

**SECTION 60.** 157.13 of the statutes is created to read:

**157.13 Endowment care cemeteries. (1) DETERMINATION OF ENDOWMENT CARE STATUS.** (a) The cemetery authority of a cemetery or portion of a cemetery may apply to the department for a determination of whether the cemetery or portion of the cemetery qualifies as an endowment care cemetery under pars. (b) to (e). The department shall provide a written determination of whether the cemetery or portion of the cemetery meets those qualifications.

(b) The department shall promulgate rules for determining whether a cemetery or a portion of a cemetery qualifies as an endowment care cemetery. The rules shall require that, in order to qualify as an endowment care cemetery, the cemetery authority of the cemetery or portion of the cemetery must have established a care fund that meets the requirements in pars. (c) to (e).

(c) If a cemetery or portion of a cemetery has been dedicated before the effective date of this paragraph ... [revisor inserts date], and, prior to the date on which an application is submitted under par. (a), not more than 80% of the cemetery or portion of the cemetery has been sold through the sale of cemetery lots and mausoleum spaces, the cemetery or portion of the cemetery does not qualify as an endowment care cemetery unless the cemetery authority has a care fund established for the cemetery or portion of the cemetery that has a balance of at least:

1. Twenty-five thousand dollars, if the cemetery or portion of the cemetery consists of 25 acres or less.
2. Sixty thousand dollars, if the cemetery or portion of the cemetery consists of more than 25 acres but not more than 50 acres.
3. One hundred thousand dollars, if the cemetery or portion of the cemetery consists of more than 50 acres but not more than 75 acres.
4. Two hundred thousand dollars, if the cemetery or portion of the cemetery consists of more than 75 acres but not more than 100 acres.
5. Two hundred thousand dollars, plus \$2,000 for each acre or portion of each acre in excess of 100 acres, if the cemetery or portion of the cemetery consists of more than 100 acres.

(d) If a cemetery or portion of a cemetery has been dedicated before the effective date of this paragraph ... [revisor inserts date], and, prior to the date on which an application is submitted under par. (a), more than 80% of the cemetery or portion of the cemetery has been sold through the sale of cemetery lots and mausoleum spaces, the cemetery or portion of the cemetery does not qualify as an endowment care cemetery unless the cemetery authority has a care fund established for the cemetery or portion of the cemetery that has a balance that is greater than or equal to the sum of all of the following:

1. Twenty-five dollars for each cemetery lot or 15% of the payments of principal for each cemetery lot, whichever is less, in the cemetery or portion of the cemetery that was sold before the effective date of this subdivision .... [revisor inserts date].

2. Twenty-five dollars for each mausoleum space or 25% of the payments of principal for each mausoleum space, whichever is less, in the cemetery or portion of the cemetery that was sold before the effective date of this subdivision .... [revisor inserts date], but not to exceed 25% of the cost of constructing all of the mausoleums in which those mausoleum spaces are located.

3. Fifteen percent of the payments of principal for each cemetery lot in the cemetery or portion of the cemetery that is sold on or after the effective date of this subdivision .... [revisor inserts date].

4. Twenty-five percent of the payments of principal for each mausoleum space in the cemetery or portion of the cemetery that is sold on or after the effective date of this subdivision .... [revisor inserts date], but not to exceed 25% of the cost of constructing all of the mausoleums in which those mausoleum spaces are located.

(e) A cemetery or portion of a cemetery that is dedicated on or after the effective date of this paragraph ... [revisor inserts date], does not qualify as an endowment care cemetery unless the cemetery authority has a care fund established for the cemetery that has a balance of at least \$25,000.

(f) A cemetery authority may apply under par. (a) for a determination with respect to a portion of the cemetery only if that portion is contiguous and physically separated, by a natural or an artificial barrier, from any portion of the cemetery that is not an endowment care cemetery.

**(2) ENDOWMENT CARE STANDARDS.** After a cemetery has been determined under sub. (1) (a) to be an endowment care cemetery, the cemetery authority and any successor cemetery authority shall maintain a balance in the care fund as required under sub. (1) (c) to (e) and comply with subs. (3) to (5) and ss. 157.08 (2) (d) and 157.12 (3) with respect to that cemetery or portion of the cemetery.

**(3) USE OF INCOME FROM CARE FUNDS.** The income from a care fund of an endowment care cemetery shall be used to maintain the endowment care cemetery. If the amount of income exceeds the amount necessary to properly maintain the endowment care cemetery, the excess amount may be used to maintain any portion of the cemetery that is not an endowment care cemetery.

**(4) PROHIBITED PRACTICE.** No cemetery authority of an endowment care cemetery may sell a cemetery lot or mausoleum space that is intended to be used for the burial of the human remains of the purchaser or the purchaser's family members unless the endowment care cemetery complies with subs. (2) and (3).

**(5) GIFTS.** The cemetery authority of an endowment care cemetery may accept property given to the endow-



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ment care cemetery in trust and may, unless contrary to the terms of the transfer, use the principal or income for the maintenance or improvement of the endowment care cemetery, or of any structure located in the endowment care cemetery that is used exclusively for cemetery purposes.

(6) **LOSS OF ENDOWMENT CARE STATUS.** (a) The department shall determine whether a cemetery or portion of a cemetery that qualified as an endowment care cemetery under sub. (1) (a) continues to qualify if the annual report filed under s. 157.62 (2) (a) or an audit under s. 157.62 (6) indicates that the cemetery authority is not in compliance with this section. The department shall provide written notice to the cemetery authority that the cemetery or portion of the cemetery may lose its endowment care status at least 90 days before making the determination.

(b) Notwithstanding the requirements in sub. (1) (c) to (e), the department may determine that the cemetery or portion of the cemetery continues to qualify as an endowment care cemetery if the department determines that sufficient funds exist to provide for the care of the cemetery lots and mausoleum spaces located in the cemetery.

(c) The department shall promulgate rules establishing procedures and standards for making determinations under this subsection.

**SECTION 61.** 157.15 of the statutes is created to read:

**157.15 Sales in other cemeteries.** No person may sell a cemetery lot or mausoleum space located in, or cemetery merchandise to be used or placed in, a cemetery or portion of a cemetery that is not an endowment care cemetery or a cemetery for which a certification under s. 157.63 is effective unless the contract for sale includes the following language in not less than 10-point boldface type: “THIS IS NOT AN ENDOWMENT CARE CEMETERY. THERE MAY NOT BE SUFFICIENT FUNDS TO PROVIDE FOR THE CARE OF YOUR PURCHASE.”

**SECTION 62.** 157.19 of the statutes is created to read:

**157.19 Deposit and investment of care funds and preneed trust funds.** (1) In this section, “financial institution” has the meaning given in s. 705.01 (3).

(2) (a) Except as provided in sub. (5) and the rules promulgated under sub. (4), the cemetery authority shall deposit care funds under ss. 157.11 (9) (b), 157.12 (3) and 157.13 and preneed trust funds under s. 440.92 with a financial institution located in this state. The financial institution shall be the trustee of the care funds and preneed trust funds. The trustee shall invest the care funds and preneed trust funds as provided under s. 881.01 (1) to (3), except as provided in sub. (5) and the rules promulgated under sub. (4).

(b) The cemetery authority may not change the trustee of a care fund without the department’s written approval.

(c) Upon request of the financial institution, the preneed seller, as defined in s. 440.90 (8), shall furnish the financial institution with a copy of the preneed sales contract. Except as provided in s. 440.92 (2) (c), (f) and (j) and (5), preneed trust funds, and any interest or dividends that have accumulated on the preneed trust funds, may not be withdrawn until all obligations under the preneed sales contract have been fulfilled. The financial institution is not responsible for the fulfillment of any part of the preneed sales contract, except that the financial institution shall release the preneed trust funds, and any interest or dividends that have accumulated on the preneed trust funds, as provided by the terms of the preneed sales contract. The trustee of a preneed trust fund may not be changed without the department’s written approval. If the trustee or account number of a preneed trust fund is changed, the cemetery authority shall notify the department in writing within 30 days after the change.

(d) The department shall promulgate rules establishing reasonable requirements and standards for the approval of changes under pars. (b) and (c). For approval of changes under par. (b), the rules shall require the cemetery authority to submit evidence that the rights and interests of the beneficiary of the care fund will be adequately protected if the change is approved. For approval of changes under par. (c), the rules shall require the trustee to submit evidence that the rights and interests of the purchaser under the preneed sales contract will be adequately protected if the change is approved.

(4) The department may promulgate rules allowing funds invested under this section to be deposited with a financial institution located outside this state.

(5) This section does not apply to care funds under s. 157.11 (9) (b) that are deposited with a city or county as provided under s. 157.11 (9) (b), to care funds of a cemetery for which a certification under s. 157.63 is effective or to preneed trust funds of a cemetery for which a certification under s. 440.92 (9) is effective.

(6) Nothing in this section prevents a cemetery authority from combining its care funds and preneed trust funds for investment purposes if the cemetery authority maintains separate accountings for each fund.

**SECTION 63.** 157.50 (6) of the statutes is amended to read:

157.50 (6) Any municipality ~~having created a perpetual~~ that creates a care fund shall invest the money received for ~~perpetual~~ care as provided by ch. 881. The municipality may terminate the ~~perpetual~~ care fund, transferring the money to its general fund, if the municipality owns the cemetery and provides all maintenance expenses in perpetuity for those ~~grave sites~~ graves in the cemetery at the time of termination.

**SECTION 64.** 157.62 of the statutes is created to read:

**157.62 Reporting; record keeping; audits.** (1) **CEMETERY ASSOCIATIONS.** (a) Except as provided in par.

(b), every cemetery association shall file an annual report with the secretary of state. The report shall be made on a calendar-year basis unless the secretary of state, by rule, provides for other reporting periods. The report is due on the 60th day after the last day of the reporting period. The annual report shall include all of the following:

1. The name of the cemetery association and the address of its principal office.
2. The name, residence address and business address of each officer, director and trustee of the cemetery association.
3. The name, residence address and business address of each shareholder who beneficially owns, holds or has the power to vote 5% or more of any class of securities issued by the cemetery association.
4. The dates and places of all meetings and elections.
5. A statement of whether the cemetery association engaged in the operation of a cemetery during the previous calendar year.

(b) Paragraph (a) does not apply to any person required to file a report under s. 180.791 or 181.651.

(c) The secretary of state may prescribe and furnish forms for reports required under this subsection. If the secretary of state prescribes forms under this paragraph, he or she shall mail the forms to cemetery associations required to file under par. (a) no later than 60 days before the reports are due.

(2) CEMETERY AUTHORITIES. (a) Except as provided in s. 157.63 (1), every cemetery authority shall file an annual report with the department. The report shall be made on a form prescribed and furnished by the department. The report shall be made on a calendar-year basis unless the department, by rule, provides for other reporting periods. The report is due on the 60th day after the last day of the reporting period.

(b) The cemetery authority shall include all of the following in the annual report required under par. (a):

1. A copy of any report required under sub. (1) (a) or s. 180.791 or 181.651.
2. If the cemetery authority is required to file a report under s. 180.791 or 181.651, the information specified in sub. (1) (a) 3.
3. An accounting of amounts deposited in, amounts withdrawn from, income accruing to and the balance at the close of the reporting period of any preneed trust funds of the cemetery.
4. An accounting of amounts deposited in, amounts withdrawn from, other income accruing to and the balance at the end of the reporting period of care funds of the cemetery, including the funds in ss. 157.11 (9) (b), 157.12 (3), 157.125 and 157.13.
5. An accounting of all gifts received, income from gifts deposited in accounts not accounted for under subd. 4, amounts expended from those accounts and the balance of those accounts at the end of the reporting period.

6. The name and address of each trustee for the funds under subs. 3 to 5 and of the financial institution holding those accounts at the close of the reporting period.

7. The information specified in sub. (1) (a), to the extent applicable, if the cemetery is not required to file a report under sub. (1) (a) or s. 180.791 or 181.651.

(c) All records relating to accountings of trust funds described under par. (b) 3. to 7 and maintained by the department are confidential and are not available for inspection or copying under s. 19.35 (1).

(d) The department shall review each report filed under par. (a) to determine whether the cemetery authority is complying with this subchapter.

(3) RECORDS; INSPECTION. (a) Every cemetery authority shall keep a copy of the report required under sub. (2) (a) at its principal place of business and, except for those records relating to accountings of trust funds described under sub. (2) (b) 3. to 7., shall make the report available for inspection, upon reasonable notice, by any person with an interest in a cemetery lot or a mausoleum space in a cemetery owned or operated by the cemetery authority.

(b) Every cemetery authority shall maintain all of the following:

1. The records needed to prepare the reports required under sub. (2) (a).
2. Records that show, for each deposit in a trust fund or account specified in sub. (2) (b) 3. or 4., the name of the purchaser or beneficiary of the contract relating to the deposit and the item purchased.
3. A copy of each contract for the sale of a cemetery lot, mausoleum space or cemetery merchandise.

(4) RECORDS MAINTENANCE. The records under sub. (3) (b) 1. shall be permanently maintained by the cemetery authority or licensee. Each record under sub. (3) (b) 2. shall be maintained for not less than 3 years after the date of the deposit. Each copy of a contract under sub. (3) (b) 3. shall be maintained for not less than 3 years after all of the obligations of the contract have been fulfilled. The department may promulgate rules to establish longer time periods for maintaining records under sub. (3) (b) 2 and 3.

(5) RULES; RECORDS. The department may promulgate rules requiring cemetery authorities and licensees to maintain other records and establishing minimum time periods for the maintenance of those records.

(6) AUDIT. Except as provided in ss. 157.63 (5) and 440.92 (9) (e), the department may audit, at reasonable times and frequency, the records, trust funds and accounts of any cemetery authority, including records, trust funds and accounts pertaining to services provided by a cemetery authority which are not otherwise subject to the requirements under this chapter. The department may conduct audits under this subsection on a random basis, and shall conduct all audits under this subsection without providing prior notice to the cemetery authority.

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(7) RULES; FILING FEE. The department may promulgate rules establishing a filing fee to accompany the report required under sub. (2) (a). The filing fee shall be based on the approximate cost of regulating cemetery authorities.

**SECTION 65.** 157.63 of the statutes is created to read:

**157.63 Reporting and auditing exemptions; certification of compliance of cemetery affiliated with religious society.** (1) In lieu of filing an annual report under s. 157.62 (2), a cemetery authority of a cemetery that is affiliated with a religious society organized under ch. 187 or that religious society may file an annual certification with the department as provided in this section.

(2) A certification under this section shall be made on a form prescribed and furnished by the department and include all of the following:

(a) The name and address of each cemetery to which the certification applies.

(b) A notarized statement of a person who is legally authorized to act on behalf of the religious society under this section that, during the reporting period under s. 157.62, each cemetery and the cemetery authority of each cemetery specified under par. (a) have either fully complied or have substantially complied with ss. 157.08 (2) (d), 157.12 (3) and 157.13 (1) (c) to (e) and (3) to (5).

(3) If the statement under sub. (2) (b) includes a statement of substantial compliance, the statement under sub. (2) (b) must also specify those instances when the cemetery or cemetery authority did not fully comply with s. 157.08 (2) (d), 157.12 (3) or 157.13 (1) (c) to (e) or (3) to (5).

(4) A certification under this section is effective for the 12-month period immediately following the reporting period under s. 157.62 (2) for which the cemetery authority is certified under this section to have fully or substantially complied with ss. 157.08 (2) (d), 157.12 (3) and 157.13 (1) (c) to (e) and (3) to (5).

(5) During the effective period specified under sub. (4), the department may not audit the care funds or any records or accounts relating to the care funds of a cemetery to which a certification under this section applies.

(6) The religious society that is affiliated with a cemetery to which a certification under this section applies is liable for the damages of any person that result from the failure of the cemetery or cemetery authority to fully comply with s. 157.08 (2) (d), 157.12 (3) or 157.13 (1) (c) to (e) or (3) to (5) during the reporting period under s. 157.62 (2) for which such compliance has been certified under this section.

**SECTION 66.** 157.635 of the statutes is created to read:

**157.635 Regulations of cemetery affiliated with religious society.** Nothing in this subchapter prohibits a cemetery authority of a cemetery that is affiliated with a religious society organized under ch. 187 from prohibiting the burial of the human remains of an individual in the cemetery if the individual was in a class of individuals

who are prohibited under regulations adopted by the cemetery authority or religious society from being buried in the cemetery.

**SECTION 67.** 157.64 of the statutes is created to read:

**157.64 Penalties.** (1) In addition to or in lieu of other remedies provided by law, any person who violates this subchapter or any rule promulgated under this subchapter may be required to forfeit not more than \$200 for each separate offense. Each day of continued violation constitutes a separate offense.

(2) Any person who intentionally does any of the following may be fined not more than \$1,000 or imprisoned for not more than 90 days or both:

(a) Violates s. 157.08 (2) (b) or (d), 157.12 (2) (b), (c) or (d) or (4) (b), 157.13 (4) or 157.15.

(b) Fails to handle funds for the improvement and care of a cemetery as required in s. 157.11 or 157.125.

(c) Fails to deposit or invest care funds or preneed trust funds as required in s. 157.19.

(d) Fails to file a report or files an incomplete, false or misleading report under s. 157.62 (1) or (2).

(e) Fails to maintain records as required in s. 157.62 (3) and (4).

(f) Files a false or misleading certification under s. 157.63.

(3) Any person who intentionally commits an act specified under sub. (2) with intent to defraud may be punished for theft under s. 943.20.

**SECTION 68.** 157.65 of the statutes is created to read:

**157.65 Enforcement.** (1) (a) If the department of regulation and licensing has reason to believe that any person is violating or has violated this subchapter or any rule promulgated under this subchapter and that the continuation of that activity might cause injury to the public interest, the department of regulation and licensing may investigate.

(b) If the department of industry, labor and human relations has reason to believe that any person is violating s. 157.12 or any rule promulgated under s. 157.12 and that the continuation of that activity might cause injury to the public interest, the department of industry, labor and human relations may investigate.

(2) The department of justice or any district attorney, upon informing the department of justice, may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction any violation of this subchapter. The court may, prior to entry of final judgment, make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action, if proof of such loss is submitted to the satisfaction of the court. The department of justice may subpoena persons and require the production of books and other documents, and may request the department of regulation and licensing or the department of industry, labor and human relations to exercise its authority under sub.

(1) to aid in the investigation of alleged violations of this subchapter.

(3) In lieu of instituting or continuing an action under this section, the department of justice may accept a written assurance of discontinuance of any act or practice alleged to be a violation of this subchapter from the person who has engaged in the act or practice. An assurance entered into under this subsection shall not be considered evidence of a violation of this subchapter, but a violation of the assurance shall be treated as a violation of this subchapter.

**SECTION 69.** 187.04 of the statutes is amended to read:

**187.04** (title) **Episcopal church.** The rectors, wardens and vestrymen vestry being the trustees of each Protestant Episcopal church may be chosen at such times and in such manner as may be in conformity with the rules and usages thereof. Each such church heretofore or hereafter incorporated may take by purchase, devise, gift or otherwise and may forever hold any lands intended to be used for cemetery grounds or burial purposes, subject to the provisions and restrictions of subch. II of ch. 157; and any such church, by its trustees, officers or agents, who shall hold the temporalities thereof, may convey them with or without consideration to the trustees of the funds and property of the Episcopal church, however called, acting within this state, to be held, sold or conveyed according to the direction of the diocesan convention or council of the Episcopal church in this state; provided, however, that the trustees, the rector, wardens and vestrymen vestry of St. Paul's Protestant Episcopal church of the city of Milwaukee and each and every one of them are hereby forbidden to sell, convey or in any manner transfer Forest Home cemetery in the city of Milwaukee or any part thereof, ~~except cemetery lots therein,~~ to any person or persons except in the normal course of cemetery operations or in pursuance of an order of some court having jurisdiction thereof, made upon due notice granting leave to convey the same.

**SECTION 70.** 423.102 of the statutes is amended to read:

**423.102 Scope.** This chapter applies to all consumer transactions, except that subch. II does not apply to cemetery preneed sales under s. 440.92.

**SECTION 71.** 440.05 (intro.) of the statutes, as affected by 1989 Wisconsin Act 31, is amended to read:

**440.05 Standard fees.** (intro.) The following standard fee schedule applies to all licenses, permits, registrations and certificates issued under chs. 440 to 459, except ss. 440.41, 440.62, 440.72, 440.85, 440.92, 444.03, 444.05 and 444.11 or unless otherwise specifically provided by statute:

**SECTION 72.** 440.05 (3) (L) 1 of the statutes is renumbered 440.05 (3) (L) 2.

**SECTION 73.** 440.05 (3) (p) 3. of the statutes is renumbered 440.05 (3) (L) 1m.

**SECTION 74.** 440.05 (8) of the statutes is amended to read:

440.05 (8) Initial or renewal license, permit, certificate or registration for funeral establishments, barber or cosmetologist, aesthetician, electrologist or manicurist establishments, pharmacies, drug manufacturers, drug distributors, cemetery associations authorities, corporations, partnerships and business firms: \$50.

**SECTION 75.** Subchapter VIII of chapter 440 of the statutes is created to read:

## CHAPTER 440

### SUBCHAPTER VIII

#### CEMETERY AUTHORITIES, SALESPERSONS AND PRENEED SELLERS

**440.90 Definitions.** In this subchapter:

(1) "Business day" has the meaning given in s. 421.301 (6).

(2) "Cemetery authority" has the meaning given in s. 157.061 (2).

(3) "Cemetery merchandise" has the meaning given in s. 157.061 (3).

(4) "Human remains" has the meaning given in s. 157.061 (8).

(5) "Mausoleum" has the meaning given in s. 157.061 (9).

(6) "Mausoleum space" has the meaning given in s. 157.061 (10).

(6m) "Payment of principal" has the meaning given in s. 157.061 (11r).

(7) "Preneed sales contract" has the meaning given in s. 157.061 (12).

(8) "Preneed seller" means an individual who sells or solicits the sale of cemetery merchandise or an undeveloped space under a preneed sales contract or, if such an individual is employed by or acting as an agent for a cemetery authority or any other person, the cemetery authority or other person.

(9) "Preneed trust fund" has the meaning given in s. 157.061 (13).

(10) "Public mausoleum" has the meaning given in s. 157.061 (14).

(11) "Sale" has the meaning given in s. 157.061 (16).

(12) "Undeveloped space" has the meaning given in s. 157.061 (17).

(13) "Warehouse" means a place of storage for cemetery merchandise sold under a preneed sales contract.

(14) "Wholesale cost ratio" means the actual cost to a preneed seller to supply and deliver cemetery merchandise or to construct an undeveloped space divided by the price paid by the purchaser, excluding sales tax, finance or interest charges and insurance premiums.

**440.91 Cemetery authorities and cemetery salespersons.**

(3) Any cemetery salesperson may transfer to the employment of a cemetery authority, other than the cemetery authority that certified the salesperson under sub.



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(2), by filing a transfer form with the department and paying the transfer fee specified in s. 440.05 (7).

(4) Registrations under this section expire on December 31 of each even-numbered year. Renewal applications shall be submitted to the department biennially on a form provided by the department and shall include the applicable renewal fee specified in s. 440.05 (3) (L) or (8).

(9) No cemetery authority or cemetery salesperson registered under sub. (1) or (2) may pay a fee or commission as compensation for a referral or as a finder's fee relating to the sale of a cemetery lot, cemetery merchandise or mausoleum space to any person who is not registered under sub. (1) or (2) or who is not regularly and lawfully engaged in the sale of cemetery lots, cemetery merchandise or mausoleum spaces in another state or territory of the United States or a foreign country.

(10) Nothing in this section requires an individual who is registered as a preneed seller under s. 440.92 (1) to be registered as a cemetery salesperson under sub. (2) if the individual only sells or solicits the sale of cemetery merchandise or undeveloped spaces under preneed sales contracts.

**440.92 Cemetery preneed sellers. (1) REGISTRATION.** (a) Except as authorized under subs. (4) and (9) (a) 1., every individual who sells or solicits the sale of cemetery merchandise or an undeveloped space under a preneed sales contract and, if the individual is employed by or acting as an agent for a cemetery authority or any other person, that cemetery authority or other person is required to be registered under this subsection.

(b) The department shall issue a certificate of registration as a cemetery preneed seller to any person who does all of the following:

1. Submits an application to the department on a form provided by the department.
2. Pays the fee under par. (d).
3. Subject to ss. 111.321, 111.322 and 111.335, submits evidence satisfactory to the department that the person does not have a conviction record.
4. Meets any other reasonable requirements established by the department by rule to determine fitness to sell cemetery merchandise or an undeveloped space under a preneed sales contract. The rules may not require applicants to meet minimum education, experience or prior employment requirements or to pass any examination.

(c) Certificates issued under par. (b) expire on December 31 of each even-numbered year. Renewal applications shall be submitted to the department biennially on a form provided by the department and shall include the renewal fee under par. (d).

(d) The department shall promulgate rules establishing the fees required under pars. (b) and (c). The fees shall be based on the approximate cost of regulation.

(e) Nothing in this subsection requires an individual who is registered as a cemetery salesperson under s. 440.91 (2) to be registered under this subsection if the individual does not conduct or solicit any sale under a preneed sales contract.

(2) PRENEED SALES CONTRACTS. (a) A preneed sales contract for the sale of cemetery merchandise shall provide for the delivery of cemetery merchandise in one of the following ways:

1. By physically delivering the merchandise to the purchaser or the beneficiary named in the preneed sales contract.

2. By affixing the cemetery merchandise to the cemetery lot or mausoleum.

3. By storing the cemetery merchandise in a warehouse that is located on the property of the preneed seller if the preneed seller insures the cemetery merchandise and the preneed sales contract requires the preneed seller to ultimately affix the cemetery merchandise to the cemetery lot or mausoleum without additional charge.

- 3g. By storing the cemetery merchandise anywhere on the property of the preneed seller if the property of the preneed seller is located in this state, the preneed seller insures the cemetery merchandise and the preneed sales contract requires the preneed seller to ultimately affix the cemetery merchandise to a cemetery lot, to the outside of or the grounds surrounding a mausoleum or to any other outdoor location without additional charge.

4. By having the cemetery merchandise stored in a warehouse that is not located on the property of the preneed seller if the warehouse has agreed to ship the cemetery merchandise to the preneed seller, purchaser or beneficiary named in the preneed sales contract without additional charge to the purchaser and the preneed sales contract requires that the cemetery merchandise ultimately be affixed to the cemetery lot or mausoleum without additional charge. If the cemetery merchandise is delivered under this subdivision, all of the following apply:

- a. At the time that the preneed sales contract is entered into, the preneed seller shall provide the purchaser with the name, address and telephone number of the warehouse and inform the purchaser that the warehouse is approved by the department.

- b. If the name, address, telephone number or approval status of the warehouse changes before the cemetery merchandise is delivered, the preneed seller or warehouse shall notify the purchaser in writing of each change within 30 days after the change.

- c. The preneed sales contract shall provide for the cemetery merchandise to be delivered within 30 days after the purchaser or beneficiary requests the preneed seller or warehouse to deliver the cemetery merchandise and shall contain the procedure and any requirements for making the request.

(am) If a preneed sales contract for the sale of cemetery merchandise requires the preneed seller to ultimately affix the cemetery merchandise to a cemetery lot, mausoleum or other location but the purchaser has not informed the preneed seller of the location where the cemetery merchandise is to be affixed and the location where the cemetery merchandise is to be affixed is not specified in the preneed sales contract, the preneed sales contract may provide that the preneed seller may charge the purchaser an additional fee at the time that the cemetery merchandise is affixed not to exceed the additional costs to the preneed seller that are necessitated by the purchaser's choice of location.

(b) If a preneed sales contract does not require the preneed seller to deliver cemetery merchandise by one of the methods under par. (a), the preneed seller shall deliver the cemetery merchandise under par. (a) 2.

(c) Except as provided in par. (cm), a preneed sales contract shall provide that if the purchaser voids the preneed sales contract at any time within 10 days after the date of the initial payment the preneed seller shall, within 30 days after the date on which the preneed sales contract is voided, refund all money paid by the purchaser for cemetery merchandise that has not been supplied or delivered and for the mausoleum space.

(cm) If a preneed sales contract for the sale of cemetery merchandise requires the preneed seller to physically alter any cemetery merchandise, the preneed sales contract shall provide that if the purchaser voids the preneed sales contract at any time before the preneed seller has physically altered the cemetery merchandise in a manner or to a degree that makes the fair market value of the cemetery merchandise to the general public lower than the sale price of the cemetery merchandise under the preneed sales contract or within 10 days after the date of the initial payment, whichever occurs first, the preneed seller shall, within 30 days after the date on which the preneed sales contract is voided, refund all money paid by the purchaser for cemetery merchandise that has not been supplied or delivered.

(d) A preneed seller may not sell any undeveloped space unless the plans for the construction of the mausoleum have been submitted to the department of industry, labor and human relations for approval under s. 157.12 (2) (a) and the preneed sales contract includes the following language in not less than 10-point boldface type: **“THE PLANS FOR CONSTRUCTING THE MAUSOLEUM SPACE HAVE BEEN SUBMITTED TO THE DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS FOR APPROVAL. THE SELLER IS RESPONSIBLE FOR ALL COSTS REQUIRED TO OBTAIN APPROVAL OF THE PLANS BY THE DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS, COMPLETE THE CONSTRUCTION, AND OBTAIN CERTIFICATION OF THE CONSTRUCTION BY THE**

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS.”

(e) A preneed sales contract for the sale of an undeveloped space shall provide that the purchaser may void the preneed sales contract if any of the following conditions applies:

1. The plans for constructing the mausoleum are not approved under s. 157.12 (2) (a).

2. The construction of the mausoleum does not begin within 3 years after the date of the sale.

3. If the mausoleum is a public mausoleum, the construction of the mausoleum is not certified under s. 157.12 (2) (b) within 6 years after the date of the sale.

(f) If a preneed sales contract is voided under par. (e), the preneed seller shall, within 30 days after the date on which the preneed sales contract is voided, refund all money paid by the purchaser, together with interest calculated at the legal rate of interest as provided under s. 138.04.

(g) A preneed seller may include in a preneed sales contract provisions that do any of the following:

1. Place restrictions on the right of the purchaser to assign his or her interest in any undelivered cemetery merchandise or undeveloped space to any other person, but only if such restrictions are consistent with regulations, established by the cemetery authority of the cemetery in which the cemetery merchandise will ultimately be affixed or in which the undeveloped space is located, that specify who may or may not be buried in the cemetery.

2. Require the purchaser to notify the preneed seller that the purchaser has assigned his or her interest in any undelivered cemetery merchandise or undeveloped space to any other person within a reasonable period of time after the interest has been assigned.

(h) A provision in a preneed sales contract that purports to waive or is in conflict with any part of this section is void.

(i) If a preneed sales contract includes provisions for the sale of cemetery merchandise or an undeveloped space that is subject to the trusting requirements under sub. (3) (a) and (b) and for the sale of other goods or services that are not subject to the trusting requirements under sub. (3) (a) and (b), the sale price of the goods or services that are not subject to the trusting requirements may not be inflated for the purpose of allocating a lower sale price to the cemetery merchandise or undeveloped space that is subject to the trusting requirements.

(j) A preneed sales contract shall be in writing. The preneed seller shall provide the purchaser with a copy of the preneed sales contract at the time that the preneed sales contract is entered into. A provision in a written preneed sales contract that limits the terms of the transaction to those included in the written preneed sales contract and that disclaims any oral agreements pertaining to the transaction creates a rebuttable presumption that no

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oral preneed sales contract pertaining to the transaction exists. A preneed sales contract that is not in writing may not be voided by the preneed seller, but may be voided by the purchaser at any time before all of the cemetery merchandise purchased has been delivered, before the plans for constructing the mausoleum have been approved under s. 157.12 (2) (a) or, if the mausoleum is a public mausoleum, before the construction of the mausoleum has been certified under s. 157.12 (2) (b). If a preneed sales contract is voided under this paragraph, the preneed seller shall, within 30 days after the date on which the preneed sales contract is voided, refund all money paid by the purchaser, together with interest calculated at the legal rate of interest as provided under s. 138.04.

(k) A preneed sales contract shall include the following language in not less than 10-point boldface type: “SECTION 440.92 (2) OF THE WISCONSIN STATUTES SPECIFIES THE RIGHTS OF THE PURCHASER UNDER THIS CONTRACT. DEPENDING ON THE CIRCUMSTANCES, THESE MAY INCLUDE THE RIGHT TO VOID THE CONTRACT AND RECEIVE A REFUND OR THE RIGHT TO ASSIGN AN INTEREST IN THE CONTRACT TO ANOTHER PERSON.”

**(3) DEPOSITS IN PRENEED TRUST FUND AND CARE FUND.**

(a) A preneed seller shall deposit into a preneed trust fund an amount equal to at least 40% of each payment of principal that is received from the sale of cemetery merchandise under a preneed sales contract, or the wholesale cost ratio for the cemetery merchandise multiplied by the amount of the payment of principal that is received, whichever is greater. In addition to the amount required to be deposited under this paragraph for the sale of cemetery merchandise and except as provided in par. (c), if a preneed seller receives payment for the sale of an undeveloped space under a preneed sales contract, the preneed seller shall deposit a percentage of each payment of principal that is received from the sale of the undeveloped space into a preneed trust fund, determined as follows:

1. If the actual cost to the preneed seller of constructing the undeveloped space in accordance with construction plans approved under s. 157.12 (2) (a) has been determined by a registered architect or engineer and accepted in a written construction agreement by both the preneed seller and the person who has agreed to construct the mausoleum, the minimum percentage of each payment of principal that must be deposited into the preneed trust fund is the percentage equal to the wholesale cost ratio for the undeveloped space. In this subdivision, “registered architect or engineer” means a person who is registered as an architect or engineer under ch. 443.

2. If the cost to the preneed seller of constructing the undeveloped space has not been determined as provided in subd. 1, the preneed seller shall deposit at least 40% of each payment of principal into the preneed trust fund.

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

(c) A preneed seller is not required to make the deposits required under par. (a) 1. and 2 if any of the following applies:

1. The mausoleum is certified under s. 157.12 (2) (b) within 30 business days after the payment is received.

2. The undeveloped space is located in a mausoleum or project of mausoleums in which at least one mausoleum space was sold before the effective date of this subdivision ... [revisor inserts date]. In this subdivision, “project of mausoleums” means a group of mausoleums that have been or are intended to be built and arranged in a cemetery according to a single construction plan approved under s. 157.12 (2) (a).

3. The preneed seller files with the department a bond furnished by a surety company authorized to do business in this state or an irrevocable letter of credit from a financial institution, as defined in s. 157.19 (1), and the amount of the bond or letter of credit is sufficient to secure the cost to the cemetery authority of constructing the mausoleum.

(d) If payments are received under a preneed sales contract for an undeveloped space, the preneed seller shall make deposits into the care fund required under s. 157.12 (3) in addition to any deposits required under par. (a).

**(4) EXCEPTIONS TO REGISTRATION REQUIREMENT.** (a) Any person who sells or solicits the sale of cemetery merchandise under a preneed sales contract is not required to be registered under sub. (1) and the requirements of sub. (3) (a) and (b) do not apply to the sale if all payments received under the preneed sales contract are trusted as required under s. 445.125 (1) (a) or if all of the following conditions are met:

1. The preneed seller guarantees that the cemetery merchandise will be delivered not more than 180 days after the date of the sale.

2. The cemetery merchandise is delivered or the preneed sales contract is voided not more than 180 days after the date of the sale.

(b) If any preneed seller who is not registered under sub. (1) accepts a payment under a preneed sales contract and the merchandise is not delivered within 180 days after the date of the sale, the preneed seller shall immediately notify the purchaser that the purchaser is entitled to a refund of all money paid by the purchaser, together with interest calculated at the legal rate of interest as provided under s. 138.04, at any time before the merchandise is delivered.

**(5) USE OF PRENEED TRUST FUNDS TO COVER COSTS OF CONSTRUCTION OR PARTIAL PERFORMANCE.** (a) Before the

construction of a mausoleum for which a preneed trust fund has been established is certified under s. 157.12 (2) (b), the trustee of the preneed trust fund shall, upon receipt of a written request for the release of a specified amount of the funds from the preneed seller and the person who is constructing the mausoleum, release the specified amount of the funds, but only if the request is accompanied by a sworn statement, signed by the preneed seller and the person who is constructing the mausoleum, certifying that the specified amount does not exceed the amount charged to the preneed seller by the person who is constructing the mausoleum for labor that has actually been performed and materials that have actually been used in the construction of the mausoleum, and does not include any cost for which preneed trust funds have been previously released under this paragraph.

(b) Before all of the terms of a preneed sales contract for the sale of cemetery merchandise are fulfilled, the trustee of the preneed trust fund shall, upon receipt of a written request for the release of a specified amount of the funds from the preneed seller, release the specified amount of the funds, but only if the request is accompanied by a sworn statement, signed by the preneed seller, certifying that the specified amount does not exceed the actual cost to the preneed seller for any cemetery merchandise that has actually been supplied or delivered and for any cemetery services that have actually been performed, and does not include any cost for which preneed trust funds have been previously released under this paragraph.

**(6) REPORTING; RECORD KEEPING; AUDITS.** (a) Every preneed seller registered under sub. (1) shall file an annual report with the department. The report shall be made on a form prescribed and furnished by the department. The report shall be made on a calendar-year basis unless the department, by rule, provides for other reporting periods. The report is due on or before the 60th day after the last day of the reporting period.

(b) The preneed seller shall include all of the following in the annual report under par. (a):

1. If the preneed seller is a corporation that is required to file a report under s. 180.791 or 181.651, a copy of that report and the name, residence address and business address of each shareholder who beneficially owns, holds or has the power to vote 5% or more of any class of securities issued by the corporation.

2. An accounting of amounts deposited in, amounts withdrawn from, income accruing to and the balance at the close of the reporting period of each preneed trust fund for which the preneed seller is the trustee.

(c) A preneed seller who is the trustee of any trust fund under s. 445.125 shall include in the report required under par. (a) an accounting of amounts deposited in, amounts withdrawn from, income accruing to and the balance at the close of the reporting period of such trust funds.

(d) All records described under pars. (b) 2. and (c) and maintained by the department are confidential and are not available for inspection or copying under s. 19.35 (1).

(e) The department shall review each report filed under par. (a) to determine whether the preneed seller is complying with this section.

(f) The preneed seller shall keep a copy of the report required under par. (a) at its principal place of business and, except for those records described under pars. (b) 2. and (c), shall make the report available for inspection, upon reasonable notice, by any person with an interest in purchasing cemetery merchandise or a mausoleum space from the preneed seller or by any person who has entered into or is the beneficiary of a preneed sales contract with the preneed seller.

(g) The preneed seller shall maintain all of the following:

1. The records needed to prepare the reports required under par. (a).

2. Records that show, for each deposit in a trust fund or account specified in pars. (b) 2 and (c), the name of the purchaser or beneficiary of the preneed sales contract relating to the deposit and the item purchased.

3. A copy of each preneed sales contract.

(h) The records under par. (b) 1. shall be permanently maintained by the preneed seller. The records under par. (b) 2. shall be maintained for not less than 3 years after all of the obligations of the preneed sales contract have been fulfilled. The department may promulgate rules to establish longer time periods for maintaining records under this paragraph.

(i) The department may promulgate rules requiring preneed sellers registered under sub. (1) to maintain other records and establishing minimum time periods for the maintenance of those records.

(j) The department may audit, at reasonable times and frequency, the records, trust funds and accounts of any preneed seller registered under sub. (1), including records, trust funds and accounts pertaining to services provided by a preneed seller which are not otherwise subject to the requirements under this section. The department may conduct audits under this paragraph on a random basis, and shall conduct all audits under this paragraph without providing prior notice to the preneed seller.

(k) The department may promulgate rules establishing a filing fee to accompany the report required under par. (a). The filing fee shall be based on the approximate cost of regulating preneed sellers.

**(7) APPROVAL OF WAREHOUSES.** No person may own or operate a warehouse unless the warehouse is approved by the department. Upon application, the department shall approve a warehouse that is located in this state if the person who operates the warehouse is licensed as a public warehouse keeper by the department of agricul-



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ture, trade and consumer protection under ch. 99, but may not approve a warehouse that is located in this state unless the person is so licensed. The department shall promulgate rules establishing the requirements for approval of warehouses that are located outside this state. The rules shall require warehouses that are located outside this state to file with the department a bond furnished by a surety company authorized to do business in this state in an amount that is sufficient to guarantee the delivery of cemetery merchandise to purchasers under preneed sales contracts. The department shall compile and keep a current list of the names and addresses of all warehouses approved under this subsection and shall make the list available for public inspection during the times specified in s. 230.35 (4) (f).

**(8) CEMETERY CONSUMER PROTECTION FUND; ASSESSMENTS AND REIMBURSEMENTS.** (a) In this subsection:

1. “Consumer” means a person who has purchased or intends to purchase cemetery merchandise or services or a cemetery lot or mausoleum space from a cemetery authority, cemetery salesperson or preneed seller.

2. “Fund” means the cemetery consumer protection fund created under s. 25.85.

(b) Beginning on the date determined by the department, but not later than January 1, 1993, the department shall annually assess each preneed seller \$5 for each preneed sales contract that is subject to the trusting requirements under sub. (3) (a) and (b) and that has been entered into by the preneed seller during the 12-month period immediately preceding the date on which the assessment is made. Each preneed seller shall pay the amount of the assessment to the department within 30 days after receiving the assessment, except as provided in sub. (9) (a) 2. The department shall deposit all moneys collected under this paragraph into the fund. Whenever the balance in the fund equals or exceeds \$1,000,000 on the date on which the department would otherwise make an annual assessment, the department may not make that assessment, and may not make any subsequent assessment unless the balance in the fund falls below \$1,000,000. The department may make assessments on different dates in different years in order to maintain a balance of at least \$1,000,000 in the fund, but may not make more than one assessment during any 12-month period.

(c) Any consumer who claims a loss resulting from the illegal, unprofessional or unethical conduct of a cemetery authority, cemetery salesperson or preneed seller may apply to the department for reimbursement for those losses. The department shall review each application submitted, investigate each claim of loss, approve or deny each application and reimburse each consumer whose application is approved. Reimbursements under this paragraph shall be paid from the appropriation under s. 20.165 (1) (q).

(d) The department shall promulgate rules establishing procedures and requirements for making and collect-

ing annual assessments under par. (b) and for reviewing applications, investigating claims, approving and denying applications and making reimbursements under par. (c).

(e) The state is subrogated to the rights of a claimant who is reimbursed under par. (c) in an amount equal to the amount of the claimant’s reimbursement. The attorney general shall make reasonable efforts to recoup the amounts paid under par. (c) from the persons who are liable for the illegal, unprofessional or unethical conduct for which those amounts are paid. A claimant who is reimbursed under par. (c) shall cooperate with the attorney general in any action brought under this paragraph.

**(9) EXEMPTIONS; CERTIFICATION OF COMPLIANCE OF CEMETERY AFFILIATED WITH RELIGIOUS SOCIETY.** (a) If the cemetery authority of a cemetery that is affiliated with a religious society organized under ch. 187 or that religious society files an annual certification with the department as provided in this subsection, all of the following apply:

1. Neither the cemetery authority nor any employe of the cemetery is required to be registered as a cemetery preneed seller under sub. (1) during the period for which the certification is effective.

2. If the cemetery authority or any employe of the cemetery receives an assessment under sub. (8) during the period for which the certification is effective, the cemetery authority or employe is not required to pay the amount of the assessment.

(b) A certification under this subsection shall be made on a form prescribed and furnished by the department and include all of the following:

1. The name and address of each cemetery to which the certification applies.

2. The name, address and social security number of each employe of the cemetery who sold or solicited the sale of cemetery merchandise or an undeveloped space under a preneed sales contract for the cemetery during the 12-month period immediately preceding the date on which the certification is filed with the department.

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

(c) If the statement under par. (b) 3. includes a statement of substantial compliance, the statement of substantial compliance must also specify those instances when the employe or cemetery authority did not fully comply with sub. (2), (3) (a) or (b) or (5).

(d) A certification under this subsection is effective for the 12-month period immediately following the date on which the certification is filed with the department.

(e) During the effective period specified under par. (d), the department may not audit the preneed trust funds or any records or accounts relating to the preneed trust funds of the cemetery authority or any employe of the cemetery to which a certification under this subsection applies.

(f) The religious society that is affiliated with a cemetery to which a certification under this subsection applies is liable for the damages of any person that result from the failure of any employe specified under par. (b) 2. or the cemetery authority to fully comply with sub. (2), (3) (a) or (b) or (5) during the 12-month period for which such compliance has been certified under this subsection.

**440.93 Disciplinary actions and proceedings.** (1) The department may reprimand a registrant or deny, limit, suspend or revoke a certificate of a cemetery authority, cemetery salesperson or preneed seller if it finds that the applicant or registrant, or, if the applicant or registrant, is an association, partnership or corporation, any officer, director, trustee or shareholder who beneficially owns, holds or has the power to vote 5% or more of any class of security issued by the applicant or registrant, has done any of the following:

(a) Made a material misstatement in an application for a certificate or for renewal of a certificate.

(b) Made a substantial misrepresentation or false promise to an individual to influence the individual to purchase a cemetery lot, cemetery merchandise or mausoleum space.

(c) Engaged in any practice relating to the sale of a cemetery lot, cemetery merchandise or mausoleum space which clearly demonstrates a lack of knowledge or ability to apply professional principles or skills.

(d) Subject to ss. 111.321, 111.322 and 111.335, been convicted of an offense the circumstances of which substantially relate to the sale of a cemetery lot, cemetery merchandise or mausoleum space.

(e) Advertised in a manner that is false, deceptive or misleading.

(f) Subject to ss. 111.321, 111.322 and 111.34, engaged in any practice relating to the sale of a cemetery lot, cemetery merchandise or mausoleum space while the person's ability to practice was impaired by alcohol or other drugs.

(g) Violated this subchapter or any rule promulgated under this subchapter.

(2) The department shall determine in each case the period that a limitation, suspension or revocation of a certificate is effective.

**440.94 Investigation of unregistered practice.** The department may conduct investigations, hold hearings and make findings as to whether a person has acted as a cemetery authority, cemetery salesperson or preneed seller without a certificate of registration required under this subchapter. The findings shall be subject to review under ch. 227. During such review any additional mate-

rial evidence presented may be considered. In lieu of holding a hearing, if there is reason to believe that a person is acting as a cemetery authority, cemetery salesperson or preneed seller without a certificate of registration and that the continuation of such activity might cause injury to the public interest, the department may petition the circuit court for a temporary restraining order, an injunction or a writ of ne exeat as provided in ch. 813.

**440.95 Penalties.** (1) Any cemetery authority that is required to register under s. 440.91 (1) and that knowingly fails to register may be fined not more than \$100.

(2) Any individual who is required to register as a cemetery salesperson under s. 440.91 (2) and who fails to register may be fined not less than \$25 nor more than \$200 or imprisoned for not more than 6 months or both.

(3) Except as provided in subs. (1) and (2), any person who violates s. 440.91 or any rule promulgated under s. 440.91 may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

(4) Any person who intentionally does any of the following may be fined not more than \$1,000 or imprisoned for not more than 90 days or both:

(a) Fails to register as a preneed seller as required under s. 440.92 (1) (a).

(b) Fails to deposit or invest preneed trust funds or care funds as required under s. 440.92 (3).

(c) Fails to file a report or files an incomplete, false or misleading report under s. 440.92 (6).

(d) Files a false or misleading certification under s. 440.92 (9).

(5) Except as provided in sub. (4), any person who violates s. 440.92 or any rule promulgated under s. 440.92 may be required to forfeit not more than \$200 for each offense. Each day of continued violation constitutes a separate offense.

**SECTION 76.** 445.12 (6) of the statutes is amended to read:

445.12 (6) No licensed funeral director or operator of a funeral establishment may operate a mortuary or funeral establishment located within the confines of, or connected with, any cemetery. No licensed funeral director or his or her employe may, directly or indirectly, receive or accept any commission, fee, remuneration or benefit of any kind from any cemetery, mausoleum or crematory or from any proprietor or agent thereof in connection with the sale or transfer of any cemetery lot, ~~entombment vault~~ outer burial container, burial privilege or cremation, nor act, directly or indirectly, as a broker or jobber of any cemetery property or interest therein.

**SECTION 77.** 445.125 (1) (a) of the statutes is amended to read:

445.125 (1) (a) Whenever a person, referred to in this section as the depositor, makes an agreement with another person selling or offering for sale funeral or burial merchandise or services, referred to in this section as the beneficiary, for the purchase of a casket, ~~burial~~

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vault not interred in outer burial container not preplaced into the burial excavation of a grave, combination easket-vault casket-outer burial container or other receptacle not described in par. (e) for the interment, entombment, cremation burial or other disposition of human remains or for the furnishing of funeral or burial services, either of which is intended to be provided for the final disposition of the body of a person, referred to in this section as the potential decedent, wherein the use of such personal property or the furnishing of such services is not immediately required, all payments made under the agreement shall be and remain trust funds, including interest and dividends if any, until occurrence of the death of the potential decedent, unless the funds are sooner released upon demand to the depositor, after written notice to the beneficiary.

**SECTION 78.** 445.125 (1) (e) of the statutes is amended to read:

445.125 (1) (e) ~~Nothing in this~~ This section prevents does not apply to the sale and delivery of cemetery lots, graves, outer burial vaults preinterred in containers preplaced into the burial excavation of a grave, cremation urns, ~~crypt spaces, niches, columbaria~~ mausoleum spaces, as defined in s. 157.061 (10), or grave or cemetery lot markers or monuments before their use is required. ~~Nothing in this section prevents the preconstruction sale of crypt spaces to be permanently installed or the sale of undeveloped spaces, as defined in s. 157.061 (17).~~

**SECTION 79.** 452.02 (title) and (6) of the statutes are repealed.

**SECTION 80.** 452.02 (1), (5) and (8) of the statutes are renumbered 440.91 (1), (5) and (7) and amended to read:

440.91 (1) ~~Any cemetery association or corporation which~~ Except as provided in sub. (6m), every cemetery authority that pays any commission or other compensation to any person, including its officers, members or stockholders, for selling or soliciting the sale of its cemetery lots or grave mausoleum spaces on a commercially operated basis shall register under this chapter. The cemetery association or corporation shall register biennially and pay the fee specified in s. 440.05 (8) with the department. The registration shall be in writing and shall include the names of the officers of the cemetery association or corporation. ~~Any cemetery association or corporation required to register under this subsection which knowingly fails to register shall be fined not more than \$100 authority.~~

(5) ~~Every cemetery association or corporation authority~~ requesting the registration or transfer of any cemetery salesperson shall be responsible for the acts of that salesperson while acting as a cemetery salesperson.

(7) ~~No cemetery salesperson's license may be required of any person soliciting~~ An individual who solicits the sale of cemetery lots or grave mausoleum spaces in a cemetery organized, maintained and operated by ~~towns, villages, cities, churches~~ a town, village, city,

church, synagogue or mosque, religious, fraternal and or benevolent societies, society or incorporated colleges college of a religious orders order is not required to be registered under sub. (2).

**SECTION 81.** 452.02 (3) and (4) (intro.) of the statutes are consolidated, renumbered 440.91 (2) (intro.) and amended to read:

440.91 (2) (intro.) ~~Every person engaging in or following the business or occupation of a cemetery salesperson shall~~ Except as provided in subs. (7) and (10), every individual who sells or solicits the sale of cemetery lots or mausoleum spaces shall register with the department. An individual may not be registered as a cemetery salesperson except upon the written request of ~~any a~~ a cemetery association or corporation authority and the payment of the fee specified in s. 440.05 (1). The cemetery association or corporation authority shall certify in writing to the department that the salesperson individual is competent to act as a cemetery salesperson. ~~The person shall be registered by the department as a salesperson and agent of the cemetery association or corporation.~~ (4) Within 10 days after the certification of any cemetery salesperson under sub. (3), ~~the cemetery~~ salesperson shall verify and furnish to the department, in such form as the department prescribes, all of the following information:

**SECTION 82.** 452.02 (4) (a) to (d) of the statutes are renumbered 440.91 (2) (a) to (d).

**SECTION 83.** 452.02 (7) of the statutes, as affected by 1989 Wisconsin Act 95, is renumbered 440.91 (6m) and amended to read:

440.91 (6m) ~~No~~ A cemetery authority of a cemetery organized, maintained and operated by a town, village, city, church, synagogue or mosque, religious, fraternal or benevolent society, or ~~by an~~ incorporated college of a religious order ~~may be is not~~ required to register ~~under or be subject to this chapter, except as provided in s. 452.022 be registered under sub. (1).~~

**SECTION 84.** 452.022 (title) and (1) (intro.) of the statutes, as created by 1989 Wisconsin Act 95, are renumbered 440.945 (title) and (1) (intro.).

**SECTION 85.** 452.022 (1) (a) and (6) (title) of the statutes, as created by 1989 Wisconsin Act 95, are repealed.

**SECTION 86.** 452.022 (1) (b) to (d), (2) to (4) and (7) of the statutes, as created by 1989 Wisconsin Act 95, are renumbered 440.945 (1) (a) to (c), (2) to (4) and (5), and 440.945 (2) (a) and (c), (3) (a) (intro.) and (4) (a) 1. to 4., as renumbered, are amended to read:

440.945 (2) (a) Adopt regulations, consistent with this section and with standards that the cemetery authority uses for its own monument installations, prescribing requirements and procedures for the sale, delivery, installation or care of monuments, including requirements that each vendor provide reasonable advance notice to the cemetery authority of the date on which the vendor desires to install a monument; that each vendor carry worker's compensation insurance and a minimum

amount of comprehensive general liability insurance, such minimum amount not to exceed \$300,000; and that each owner of a cemetery lot pay all fees and other amounts due the cemetery authority to satisfy any encumbrances pertaining to the cemetery lot before a monument is installed.

(c) Charge either the owner of a cemetery lot or a vendor a reasonable fee to cover the cemetery authority's labor costs. In this paragraph, "labor costs" means the amount, calculated in accordance with generally accepted accounting principles and practices, that is payable to employes of the cemetery authority for wages and fringe benefits for the period that the employes were engaged in marking the location for and inspecting the installation of the monument to ensure that it was properly installed, and may include any general administrative or overhead costs of the cemetery authority or any other costs that are directly related to marking the location for and inspecting the installation of the monument to ensure that it was properly installed.

(3) (a) (intro.) Every cemetery authority shall keep on file and make available for inspection and copying to owners and prospective purchasers of cemetery lots in the cemetery and to other interested persons all of the following information:

(4) (a) 1. Require the owner or purchaser of a cemetery lot to purchase a monument or services related to the installation of a monument from the cemetery authority.

2. Restrict the right of the owner or purchaser of a cemetery lot to purchase a monument or services related to the installation of a monument from the vendor of his or her choice.

3. Except as provided in sub. (2) (c), charge the owner or purchaser of a cemetery lot a fee for purchasing a monument or services related to the installation of a monument from a vendor, or charge a vendor a fee for delivering or installing the monument. Nothing in this subdivision shall be construed to prohibit a cemetery authority from charging the owner or purchaser of a cemetery lot a reasonable fee for services relating to the care of a monument.

4. Discriminate against any owner or purchaser of a cemetery lot who has purchased a monument or services related to the installation of a monument from a vendor.

**SECTION 87.** 452.022 (6) of the statutes, as created by 1989 Wisconsin Act 95, is renumbered 440.95 (6) and amended to read:

440.95 (6) (a) Any cemetery authority or vendor that fails to disclose information to consumers in violation of sub. s. 440.945 (3) may be required to forfeit not more than \$200.

(b) Any cemetery authority or vendor that violates sub. s. 440.945 (4) may be required to forfeit not more than \$200 for the first offense and may be required to forfeit not more than \$500 for the 2nd or any later offense

within a year. The period shall be measured by using the dates of the offenses that resulted in convictions.

**SECTION 88.** 452.03 of the statutes is amended to read:

**452.03 Brokers and salespersons licensed.** No person may engage in or follow the business or occupation of, or advertise or hold himself or herself out as, or act temporarily or otherwise as a broker or salesperson without a license. Licenses shall be granted only to persons who are competent to transact such businesses in a manner which safeguards the interests of the public, and only after satisfactory proof of the person's competence has been presented to the department. ~~If a cemetery salesperson engages in the sale of real estate other than cemetery lots or grave spaces, the cemetery salesperson shall first obtain a salesperson's license.~~

**SECTION 89.** 452.05 (1) (a) of the statutes is amended to read:

452.05 (1) (a) Grant and issue licenses to brokers and salespersons and registrations to time-share salespersons, ~~cemetery associations and corporations and cemetery salespersons.~~

**SECTION 90.** 452.10 (2) (a) and (4) (a) of the statutes are amended to read:

452.10 (2) (a) Each new application for a broker's or salesperson's license ~~or cemetery registration~~ shall be for the remainder of the biennial license period.

(4) (a) Any licensed salesperson or broker may transfer to the employment of a licensed broker ~~and any registered cemetery salesperson may transfer to the employment of a registered cemetery association or corporation~~ by first paying the transfer fee specified in s. 440.05 (7) and filing a transfer form with the department.

**SECTION 91.** 452.10 (5) of the statutes is renumbered 440.91 (8) and amended to read:

440.91 (8) Sections 452.13, 452.14, 452.15, ~~452.17, 452.18, 452.19, 452.21 and 452.22~~, as they apply to real estate salespersons, apply with equal effect to cemetery salespersons.

**SECTION 92.** 452.12 (6) (a) of the statutes is amended to read:

452.12 (6) (a) Any licensee, except a ~~cemetery salesperson registered under s. 452.02 (3) or a time-share salesperson registered under s. 452.025~~, may apply for registration as an inactive licensee on or before December 31 of the even-numbered year in which the person's license is due to expire.

**SECTION 93.** 452.13 (1) of the statutes is amended to read:

452.13 (1) Except as provided in sub. (2), all downpayments, earnest money deposits or other trust funds received by a broker, salesperson, or time-share salesperson ~~or cemetery salesperson~~ on behalf of the broker's, salesperson's, or time-share salesperson's ~~or cemetery salesperson's~~ principal or any other person shall be



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deposited in a common trust account maintained by the broker, salesperson, or time-share salesperson ~~or cemetery salesperson~~ for that purpose in a bank, savings and loan association or credit union which is authorized to do business in this state and is designated by the broker, salesperson, or time-share salesperson ~~or cemetery salesperson~~ pending the consummation or termination of the transaction, except that the money may be paid to one of the parties pursuant to the contract or option. The name of the bank, savings and loan association or credit union shall at all times be registered with the department, along with a letter authorizing the department to examine and audit the trust account when the department deems it necessary.

**SECTION 94.** 452.14 (1) and (3) (i) of the statutes are amended to read:

452.14 (1) The department shall, upon motion of the board or upon its own determination, conduct investigations in regard to the action of any broker, salesperson, or time-share salesperson, ~~cemetery association or corporation or cemetery salesperson.~~

(3) (i) Demonstrated incompetency to act as a broker, salesperson, or time-share salesperson ~~or cemetery salesperson~~ in a manner which safeguards the interests of the public;

**SECTION 95.** 452.16 (1) of the statutes is amended to read:

452.16 (1) The department may conduct investigations, hold hearings and make findings as to whether a person has acted as a broker, salesperson, or time-share salesperson ~~or cemetery salesperson.~~ The findings shall be subject to review under ch. 227. During such review any additional material evidence presented may be considered. In lieu of holding a hearing, when there is reason to believe that a person is acting as a broker or salesperson without a license or as a time-share salesperson without a certificate of registration and that the continuation of such activity might cause injury to the public interest, the department may petition the circuit court for a temporary restraining order, an injunction or a writ of ne exeat as provided in ch. 813.

**SECTION 96.** 452.17 (2) of the statutes is amended to read:

452.17 (2) Any person who engages in or follows the business or occupation of, or advertises or holds himself or herself out as or acts temporarily or otherwise as, a ~~cemetery salesperson or~~ time-share salesperson in this state without being registered with the department shall be prosecuted by the district attorney in the county where the violation occurs and may be fined not less than \$25 nor more than \$200 or imprisoned not less than 10 days nor more than 6 months or both.

**SECTION 97.** 452.17 (3) of the statutes, as affected by 1989 Wisconsin Act 95, is amended to read:

452.17 (3) ~~Except as provided in s. 452.022 (6), any~~ Any person who otherwise violates any provision of this

chapter may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

**SECTION 98.** 452.19 of the statutes is amended to read:

**452.19 Fee-splitting.** No licensed broker, ~~registered cemetery association or corporation or registered cemetery salesperson~~ may pay a fee or a commission or any part thereof for performing any act specified in this chapter or as compensation for a referral or as a finder's fee to any person who is not licensed or registered under this chapter or who is not regularly and lawfully engaged in the real estate brokerage ~~or cemetery sales~~ business in another state, a territory or possession of the United States or a foreign country.

**SECTION 99.** 701.11 (2) of the statutes is amended to read:

701.11 (2) A trust may be created for ~~perpetually~~ maintaining, keeping in repair and preserving any grave lot, tomb, monument, gravestone or any cemetery; ~~any~~ Any cemetery company, association or corporation is authorized to may receive property in trust for any ~~forementioned purpose of those purposes~~ and apply the income ~~therefrom~~ from the trust to the purpose stated in the creating instrument.

**SECTION 100.** 863.09 (2) of the statutes is amended to read:

863.09 (2) CARE OF GRAVE. The court may order the personal representative to pay a suitable amount for ~~perpetual~~ the care of the grave of the decedent. The expenditure is classed as funeral expense.

**SECTION 101.** 880.26 (3) of the statutes is amended to read:

880.26 (3) DEPLETED GUARDIANSHIPS. When the court determines that the estate of the ward is below \$5,000 and reduced to a point where it is to the advantage of the ward to dispense with the guardianship, the court may terminate the guardianship and authorize disposition of the remaining assets as provided by s. 880.04 (2); ~~and the~~ The court, as a part of the disposition, may order a suitable amount paid to the county treasurer under order of the court or reserved in the guardianship to assure the ward a decent burial, a marker, and ~~perpetual~~ care for the grave; ~~and in~~ In the case of an insolvent guardianship, the court may order an amount not exceeding \$400 reserved in the guardianship or paid to the county treasurer under order of the court to assure the ward a decent burial.

**SECTION 102.** 895.04 (5) of the statutes is amended to read:

895.04 (5) If the personal representative brings the action, the personal representative may also recover the reasonable cost of medical expenses, funeral expenses, including the reasonable cost of a cemetery lot, grave marker and ~~perpetual~~ care of the lot. If a relative brings the action, the relative may recover such medical expenses, funeral expenses, including the cost of a ceme-

tery lot, grave marker and ~~perpetual~~ care of the lot, on behalf of himself or herself or of any person who has paid or assumed liability for such expenses.

**SECTION 103. Nonstatutory provisions.** (1) TRANSFER OF RECORDS FROM REGISTER OF DEEDS TO SECRETARY OF STATE. Within 30 days after the effective date of this subsection, the office of the register of deeds of each county shall transfer to the secretary of state copies of all information filed in that office by a cemetery association under section 157.062 of the statutes.

(2) DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS; RULES. The department of industry, labor and human relations shall submit proposed rules governing the location, material and construction of mausoleums under section 157.12 (2) of the statutes, as affected by this act, to the legislative council under section 227.15 (1) of the statutes no later than the first day of the 13th month beginning after the effective date of this subsection.

(3) DEPARTMENT OF REGULATION AND LICENSING. (a) *Rules.* The department of regulation and licensing shall submit proposed rules establishing requirements for changing the trustee of a care fund and for endowment care cemeteries and preneed sales under sections 157.13 (1) (b) and (6), 157.19 (2) (d) and 440.92 (1) (d) and (7) of the statutes, as affected by this act, to the legislative council under section 227.15 (1) of the statutes no later than the first day of the 13th month beginning after the effective date of this paragraph.

(b) *Registration fees; cemetery preneed sellers.* In its 1991–93 biennial budget request under section 16.42 of the statutes, the department of regulation and licensing shall recommend establishing in the statutes the initial

and renewal fees for cemetery preneed sellers specified in the rules promulgated under section 440.92 (1) (d) of the statutes, as created by this act, and any filing fees for annual reports of cemetery authorities that are established in rules promulgated under section 157.62 (7) of the statutes, as created by this act.

(c) *Transfer of certain pending disciplinary actions; cemetery authorities and cemetery salespersons.* All disciplinary actions against cemetery authorities or cemetery salespersons pending with the real estate board on the effective date of this paragraph are transferred to the department of regulation and licensing and all materials submitted to or actions taken by the real estate board with respect to the pending matters are considered as having been submitted to or taken by the department of regulation and licensing.

**SECTION 104. Initial applicability; reimbursements from cemetery consumer protection fund.** The treatment of section 440.92 (8) (c) of the statutes first applies to consumer losses resulting from conduct of cemetery authorities, cemetery salespersons or preneed sellers that is engaged in on January 1, 1993.

**SECTION 105. Effective dates.** This act takes effect on the first day of the 18th month beginning after publication, except as follows:

(1) The treatment of section 157.15 of the statutes takes effect on the first day of the 30th month beginning after publication.

(2) SECTION 103 (1) of this act takes effect on the first day of the 23rd month beginning after publication.

(3) SECTION 103 (2) and (3) of this act take effect on the day after publication.