

State of Wisconsin



2007 Senate Bill 288

Date of enactment: **March 26, 2008**

Date of publication*: **April 9, 2008**

2007 WISCONSIN ACT 174

AN ACT *to amend* 157.062 (9), 157.08 (5), 157.11 (9g) (a) 1. c., 157.19 (2) (b) to (d), 157.19 (4) (intro.), 157.19 (5) (a), 157.19 (5) (b), 157.62 (2) (a) and (c), 157.625 (3), 440.91 (1) (a), 440.91 (1) (c), 440.91 (6m), 440.92 (2) (a) 4. a., 440.92 (7) and 440.92 (10); and *to create* 440.08 (2) (a) 21m. and 440.91 (1m) of the statutes; **relating to:** regulation of and registration requirements for certain cemetery authorities, cemetery associations, and cemetery merchandise.

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

SECTION 1. 157.062 (9) of the statutes is amended to read:

157.062 (9) EXEMPTIONS FOR CERTAIN NONPROFIT CEMETERIES. In lieu of delivering a certification, resolution, or copy of proceedings to the department of financial institutions under sub. (1), (2), or (6) (b), a cemetery association that is not required to be registered licensed under s. 440.91 (1) and that is not organized or conducted for pecuniary profit or registered under s. 440.91 (1m) shall deliver the certification, resolution, or copy of proceedings to the office of the register of deeds of the county in which the cemetery is located.

SECTION 2. 157.08 (5) of the statutes is amended to read:

157.08 (5) Subsections (1) and (2) (b) do not apply to a religious society organized under ch. 187, and sub. (2) (b) does not apply to a cemetery authority that is not required to be licensed under s. 440.91 (1) and that is not organized or conducted for pecuniary profit or registered under s. 440.91 (1m).

SECTION 3. 157.11 (9g) (a) 1. c. of the statutes is amended to read:

157.11 (9g) (a) 1. c. If not invested as provided in subd. 1. a. or b., otherwise deposited by the cemetery authority in an investment approved by the ~~department~~ cemetery board if the care funds are segregated and invested separately from all other moneys held by the cemetery authority.

SECTION 4. 157.19 (2) (b) to (d) of the statutes are amended to read:

157.19 (2) (b) The cemetery authority may not change the trustee of a care fund under s. 157.11 (9g) that is deposited under this section or of a care fund under s. 157.12 (3), and the financial institution may not release any portion of the principal amount of the care fund, without the ~~department's~~ cemetery board'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 institu-

* Section 991.11, WISCONSIN STATUTES 2005-06 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

tion 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 cemetery board's~~ written approval. If the trustee or account number of a preneed trust fund is changed, the cemetery authority shall notify the department cemetery board in writing within 30 days after the change.

(d) The department cemetery board 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.

SECTION 5. 157.19 (4) (intro.) of the statutes is amended to read:

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

SECTION 6. 157.19 (5) (a) of the statutes is amended to read:

157.19 (5) (a) This section does not apply to care funds under s. 157.11 (9g) that are deposited with a city or county as provided under s. 157.11 (9g) (a), to care funds of a cemetery for which a certification under s. 157.63 is effective, to preneed trust funds of a cemetery for which a certification under s. 440.92 (9) is effective, or to care funds or preneed trust funds of a cemetery authority that is not required to be licensed under s. 440.91 (1) ~~and that is not organized or conducted for pecuniary profit or registered under s. 440.91 (1m).~~

SECTION 7. 157.19 (5) (b) of the statutes is amended to read:

157.19 (5) (b) If the department cemetery board determines that care funds under s. 157.11 (9g) that have not been deposited with a city or county as provided in s. 157.11 (9g) (a) are not being properly segregated from other moneys held by the cemetery authority or that those care funds are not being properly invested as required in s. 157.11 (9g) (a), the department cemetery board may require the cemetery authority to deposit those care funds with a financial institution for investment under this section.

SECTION 8. 157.62 (2) (a) and (c) of the statutes are amended to read:

157.62 (2) (a) Except as provided in ss. 157.625 and 157.63 (1), every cemetery authority shall file an annual report with the department cemetery board. The report shall be made on a form prescribed and furnished by the

department cemetery board. The report shall be made on a calendar-year basis unless the department cemetery board, by rule, provides for other reporting periods. The report is due on the 60th day after the last day of the reporting period.

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

SECTION 9. 157.625 (3) of the statutes is amended to read:

157.625 (3) Section 157.62 does not apply to a cemetery authority that is not required to be licensed under s. 440.91 (1) ~~and that is not organized or conducted for pecuniary profit or registered under s. 440.91 (1m).~~

SECTION 10. 440.08 (2) (a) 21m. of the statutes is created to read:

440.08 (2) (a) 21m. Cemetery authority, registered: December 15 of each even-numbered year; \$10.

SECTION 11. 440.91 (1) (a) of the statutes is amended to read:

440.91 (1) (a) Any cemetery authority that operates a cemetery that is 5 acres or more in size, that sells 20 or more cemetery lots or mausoleum spaces at a cemetery during a calendar year, or that has \$100,000 or more in ~~preneed~~ trust fund accounts for a cemetery shall apply to the board for a license for that cemetery. A cemetery authority that operates more than one cemetery shall apply for a separate license for each cemetery that is 5 acres or more in size and for each cemetery at which it sells 20 or more burial spaces or at which it has \$100,000 or more in ~~preneed~~ trust fund accounts.

SECTION 12. 440.91 (1) (c) of the statutes is amended to read:

440.91 (1) (c) 1. The renewal dates and renewal fees for licenses granted under par. (b) are specified in s. 440.08 (2) (a), except that a licensed cemetery authority is not required to renew its license if the cemetery authority sells less than 20 cemetery lots or mausoleum spaces at a cemetery during a calendar year, or that has less than \$100,000 in ~~preneed~~ trust fund accounts for a cemetery.

2. A licensed cemetery authority that is not required to renew its license under subd. 1. shall renew the license if, during a period of 2 consecutive calendar years that is subsequent to the period specified in subd. 1., the cemetery authority sells 20 or more cemetery lots or mausoleum spaces for a cemetery or has \$100,000 or more in ~~preneed~~ trust fund accounts for a cemetery.

SECTION 13. 440.91 (1m) of the statutes is created to read:

440.91 (1m) (a) Except as provided in sub. (6m), any cemetery authority that operates a cemetery that is less than 5 acres in size, that sells fewer than 20 cemetery lots or mausoleum spaces at a cemetery during a calendar year, or that has less than \$100,000 in trust fund accounts

for a cemetery shall register with the board. A cemetery authority that operates more than one cemetery shall submit a separate registration to the board for each cemetery that is less than 5 acres in size, that sells fewer than 20 cemetery lots or mausoleum spaces at a cemetery during a calendar year, or that has less than \$100,000 in trust fund accounts.

(b) The board shall register a cemetery authority if all of the following are satisfied:

1. The cemetery authority submits an application for registration to the board on a form provided by the board. The application shall require the cemetery authority to provide the names and addresses of the officers of the cemetery authority and to identify a business representative who is primarily responsible for the cemetery authority's compliance with subch. II of ch. 157 and this subchapter.

2. The cemetery authority pays a \$10 fee to the board.

(c) The renewal date and renewal fee for a registration granted under par. (b) are specified in s. 440.08 (2).

SECTION 14. 440.91 (6m) of the statutes is amended to read:

440.91 (6m) 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 incorporated college of a religious order is not required to be licensed under sub. (1) or registered under sub. (1m).

SECTION 15. 440.92 (2) (a) 4. a. of the statutes is amended to read:

440.92 (2) (a) 4. 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 num-

ber of the warehouse and inform the purchaser that the warehouse is approved by the department board.

SECTION 16. 440.92 (7) of the statutes is amended to read:

440.92 (7) APPROVAL OF WAREHOUSES. No person may own or operate a warehouse unless the warehouse is approved by the department board. Upon application, the department board 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 agriculture, 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 board 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 board 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 board 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).

SECTION 17. 440.92 (10) of the statutes is amended to read:

440.92 (10) EXEMPTIONS; CERTAIN NONPROFIT CEMETERIES. This section does not apply to a cemetery authority that is not required to be licensed under s. 440.91 (1) and that is not organized or conducted for pecuniary profit or registered under s. 440.91 (1m).