

1989 Assembly Bill 202

Date of enactment: **December 6, 1989**
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1989 WISCONSIN ACT 95

AN ACT to amend 452.02 (7) and 452.17 (3); and to create 452.022 of the statutes, relating to: the sale and installation of cemetery monuments and providing a penalty.

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

SECTION 1. 452.02 (7) of the statutes is amended to read:

452.02 (7) No cemetery organized, maintained and operated by a town, village, city, church, fraternal or benevolent society, or by an incorporated college of a religious order may be required to register under or be subject to this chapter, except as provided in s. 452.022.

SECTION 2. 452.022 of the statutes is created to read:

452.022 Cemetery monuments. (1) DEFINITIONS.

In this section:

(a) "Cemetery authority" means any person owning or operating any cemetery specified in s. 157.065 (1).

(b) "Installed" means permanently affixed to a cemetery lot.

(c) "Monument" means any object made of granite, bronze, marble, stone, cement or other permanent material that is installed or intended to be installed to identify or memorialize human remains.

(d) "Vendor" means a person who sells, delivers, installs or cares for a monument, other than the cemetery authority of the cemetery in which the monument is installed.

(2) CEMETERY AUTHORITY POWERS. A cemetery authority may do any of the following:

(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 lot pay all fees and other amounts due the cemetery authority to satisfy any encumbrances pertaining to the lot before a monument is installed.

(b) Assist a vendor in marking the location for a monument and inspect the installation of the monument to ensure that it is properly installed by the vendor.

(c) Charge either the owner of a 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 employees of the cemetery authority for wages and fringe benefits for the period that the employees 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) DISCLOSURE OF INFORMATION TO CONSUMERS. (a) Every cemetery authority shall keep on file and make available for inspection and copying to owners and prospective purchasers of lots in the cemetery and to other interested persons all of the following information:

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1. An itemized list of the amounts charged for any services provided by the cemetery authority relating to the finishing, installation or care of monuments.

2. Any regulations adopted under sub. (2) (a).

(b) Upon the request of any person who is interested in purchasing a monument from a cemetery authority or a vendor, the cemetery authority or vendor shall provide the person with an itemized list of the amount charged for each finished monument in which the person is interested and for any services that may be provided by the cemetery authority or vendor relating to the installation or care of the monument.

(4) PROHIBITED CONDUCT. (a) A cemetery authority may not do any of the following:

1. Require the owner or purchaser of a 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 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 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 lot a reasonable fee for services relating to the care of a monument.

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

(b) A vendor may not falsely represent to any person any regulations adopted by a cemetery authority under sub. (2) (a) or falsely represent to any person the vendor's relationship with a cemetery authority.

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

(b) Any cemetery authority or vendor that violates sub. (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.

(7) ENFORCEMENT. (a) If the department has reason to believe that any person is violating this section and that the continuation of that activity might cause injury to the public interest, the department may investigate.

(b) 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 section. 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 to exercise its authority under par. (a) to aid in the investigation of alleged violations of this section.

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

SECTION 3. 452.17 (3) of the statutes is amended to read:

452.17 (3) ~~Any~~ Except as provided in s. 452.022 (6), ~~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 4. Effective date. This act takes effect on the first day of the 4th month beginning after publication.