



## CLIFFORD OTTE

WISCONSIN STATE REPRESENTATIVE  
27TH ASSEMBLY DISTRICT

April 2, 1997

To: The Members  
Assembly Committee on Consumer Affairs

From: Representative Clifford Otte, Chair *C.O.*

### MEMO

On April 2, 1997, the following clearinghouse rule was referred to the Assembly Committee on Consumer Affairs:

Clearinghouse Rule 96-193, relating to the regulation of cemetery authorities, cemetery salespersons and preneed sellers of cemetery merchandise.

The deadline for committee action on this rule is **May 2, 1997**. Please find herewith a copy of the rule. If you are interested in requesting a hearing and/or submitting comments, please do by **April 14, 1997**.



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Clearinghouse Rule 96-193, relating to the regulation of cemetery authorities, cemetery salespersons and preneed sellers of cemetery merchandise.

The deadline for committee action on this rule is **May 2, 1997**. Please find herewith a copy of the rule. If you are interested in requesting a hearing and/or submitting comments, please do by **April 14, 1997**.

**STATE OF WISCONSIN  
DEPARTMENT OF REGULATION AND LICENSING**

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**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION AND  
DEPARTMENT OF REGULATION : LICENSING ADOPTING RULES  
AND LICENSING : (CLEARINGHOUSE RULE 96-193)**

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TO: Ben Brancel  
Speaker of the Assembly  
Room 211 West, State Capitol  
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the DEPARTMENT OF REGULATION AND LICENSING is submitting in final draft form proposed rules relating to the regulation of cemetery authorities, cemetery salespersons and preneed sellers of cemetery merchandise.

If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

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State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G. Thompson  
Governor

Marlene A. Cummings  
Secretary

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# Administrative Rules in Final Draft Form

## Department of Regulation and Licensing

**Rule: Chapters RL 50, 52,  
53 and 54**

**Relating to:  
Cemetery Authorities,  
Salespersons and Preneed Sellers**

**Clearinghouse Rule:  
No. 96-193**

Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors; Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.

**STATE OF WISCONSIN  
DEPARTMENT OF REGULATION AND LICENSING**

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**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE  
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 96-193  
DEPARTMENT OF REGULATION : (s. 227.19 (3), Stats.)  
AND LICENSING :**

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**I. THE PROPOSED RULE:**

The proposed rule, including the analysis and text, is attached.

**II. REFERENCE TO APPLICABLE FORMS:**

No new or revised forms are required by these rules.

**III. FISCAL ESTIMATES:**

These rules will have no significant impact upon state or local units of government.

**IV. STATEMENT EXPLAINING NEED:**

In this proposed rule-making order, the Department of Regulation and Licensing renumbers Chapter RL 50 to Chapter RL 51 and creates a new Chapter RL 50 which defines a term used in Chapter 440, Stats., and which specifies the additional information which the department may require of applicants for registration as a cemetery authority, a cemetery salesperson or a preneed seller. 1989 Wisconsin Act 307 initially required the department to establish by rule fees for the registration of cemeteries, cemetery salespersons and preneed sellers of cemetery merchandise. The Act also stated and continues to state that the department may establish by rule a report filing fee. Chapter RL 50 initially established such fees. However, the Biennial Budget Bill, 1991 Wisconsin Act 39, created statutory fees for registering cemetery authorities, cemetery salespersons and preneed sellers. Therefore, Chapter RL 50 was amended to remove the registration fees. It still requires a \$40.00 reporting filing fee, with some exceptions. This rule proposal repeals the report filing fee required of cemetery authorities and preneed sellers of cemetery merchandise. The department proposes removing the report filing fee from the rules because the registration renewal fees in s. 440.08 (2) (a) 21, 22 and 23, Stats., are based on a formula which includes the costs of regulation and enforcement. This formula is used to determine the renewal fees of all professions and occupations regulated by the department. Costs associated with reviewing annual reports and conducting financial audits of care accounts and preneed trust accounts should be included in the registration renewal fee. There is no need for a separate report filing fee in the rule. The rule proposal also repeals obsolete provisions, removes the requirement

that certain application forms or requests be notarized and clarifies several existing provisions in the rules.

**V. NOTICE OF PUBLIC HEARING:**

A public hearing was held on February 19, 1997. There were no appearances at the public hearing. Written comments in support of the proposed rules were received from Carole J. Pierce, Secretary/Treasurer, Walworth Center Cemetery Association, Walworth, Wisconsin.

**VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:**

In response to Comment 5.e. There is no need to consider a delayed effective date or initial applicability provision because there are only a handful of approved warehouse keepers. The department is able to use some discretion in making the transition. The consumer is protected, regardless of whether the bond is written out to the state or one of its departments.

All of the other recommendations suggested in the Clearinghouse Report were accepted in whole.

**VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:**

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

STATE OF WISCONSIN  
DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION  
DEPARTMENT OF REGULATION : AND LICENSING ADOPTING RULES  
AND LICENSING : (CLEARINGHOUSE RULE 96-193)

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PROPOSED ORDER

An order of the Department of Regulation and Licensing to repeal RL 50.03 and 50.05; to renumber Chapter RL 50 (title), 50.01, 50.04 and 50.06; to renumber and amend RL 50.02; to amend RL 52.02 (2), 52.04 (2) (b), 53.02 (3), 54.04 (1) (b), (3) and (4), 54.05 (2) and (3); and to create Chapter RL 50 and 52.04 (2) (d) relating to the regulation of cemetery authorities, cemetery salespersons and preneed sellers of cemetery merchandise.

Analysis prepared by the Department of Regulation and Licensing.

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ANALYSIS

Statutes authorizing promulgation: ss. 157.19, 157.62 (2) and (7), 227.11 (2), 440.91, 440.92 (6) and (7), Stats.

Statutes interpreted: ss. 157.11, 157.19, 157.62, 157.63, 440.91 and 440.92, Stats.

In this proposed rule-making order the Department of Regulation and Licensing renumbers Chapter RL 50 to Chapter RL 51 and creates a new Chapter RL 50 which defines a term used in Chapter 440, Stats., and which specifies the additional information which the department may require of applicants for registration as a cemetery authority, a cemetery salesperson or a preneed seller. 1989 Wisconsin Act 307 initially required the department to establish by rule fees for the registration of cemeteries, cemetery salespersons and preneed sellers of cemetery merchandise. The Act also stated and continues to state that the department may establish by rule a report filing fee. Chapter RL 50 initially established such fees. However, the Biennial Budget Bill, 1991 Wisconsin Act 39, created statutory fees for registering cemetery authorities, cemetery salespersons and preneed sellers. Therefore, Chapter RL 50 was amended to remove the registration fees. It still requires a \$40.00 reporting filing fee, with some exceptions. This rule proposal repeals the report filing fee required of cemetery authorities and preneed sellers of cemetery merchandise. The department proposes removing the report filing fee from the rules because the registration renewal fees in s. 440.08 (2) (a) 21, 22 and 23, Stats., are based on a formula which includes the costs of regulation and enforcement. This formula is used to determine the renewal fees of all professions and occupations regulated by the department. Costs associated with reviewing annual reports and conducting financial audits of care accounts and preneed trust accounts should be included in the registration renewal fee. There is no need for a separate report filing fee in the rule. The rule proposal also repeals obsolete provisions, removes

the requirement that certain application forms or requests be notarized and clarifies several existing provisions in the rules.

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TEXT OF RULE

SECTION 1. Chapter RL 50 (title) and RL 50.01 and 50.02 are renumbered ch. RL 51 (title) and RL 51.01 and 51.02, and RL 51.02, as renumbered, is amended to read:

RL 51.02 FILING OF ANNUAL REPORTS. Cemetery authorities required to file an annual report under s. 157.62 (2), Stats., and preneed sellers required to file an annual report under s. 440.92 (6), Stats., shall do so on or before ~~the 60th day after the last day of the reporting period. The annual reports shall be accompanied by the filing fee required under s. RL 50.05~~ April 1 of each year.

SECTION 2. RL 50.03 is repealed.

SECTION 3. RL 50.04 is renumbered RL 51.03.

SECTION 4. RL 50.05 is repealed.

SECTION 5. RL 50.06 is renumbered RL 51.04.

SECTION 6. Chapter RL 50 is created to read:

Chapter RL 50

AUTHORITY, DEFINITIONS AND  
APPLICATIONS FOR REGISTRATION

RL 50.01 AUTHORITY. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 440.91 and 440.92, Stats.

RL 50.02 DEFINITION. In s. 440.91 (2), Stats. and chs. RL 50 to 54, "expects to sell" means that an individual, after reviewing past sales of a prospective employing cemetery authority and current and anticipated market conditions affecting the sale of the employing cemetery's cemetery lots, reasonably believes that he or she will sell or solicit the sale of 10 or more cemetery lots or mausoleum spaces or a combined total of 10 or more cemetery lots and mausoleum spaces during a calendar year.

RL 50.03 APPLICATIONS FOR CEMETERY AUTHORITY, CEMETERY SALESPERSON AND PRENEED SELLER. (1) OTHER INFORMATION. In addition to the information which the department must require of applicants for registration as a cemetery authority, a cemetery salesperson or a preneed seller pursuant to ss. 440.91 and 440.92, Stats., the department may require all of the following:

(a) Information about any crimes committed by the applicant and any charges pending against the applicant.

(b) Information about any surrender, resignation, cancellation or denial of an application for a credential or any disciplinary action taken against a credential held by the applicant in Wisconsin or another licensing jurisdiction.

(c) Information about any disciplinary action pending against the applicant in any jurisdiction and relating to a credential held by the applicant.

(d) Information about any suits or claims ever having been filed against an applicant as a result of professional services rendered by the applicant in connection with cemetery operations.

(e) Information from an applicant for registration as a cemetery salesperson, relating to whether the applicant expects to sell 10 or more cemetery lots or mausoleum spaces or a combined total of 10 or more cemetery lots and mausoleum spaces during a calendar year.

(2) BASIS FOR DENIAL OF APPLICATION. The department may limit or deny an application for registration as a cemetery authority, cemetery salesperson or preneed seller for any of the grounds for which the department may discipline a credential holder under s. 440.93, Stats.

SECTION 7. RL 52.02 (2) is amended to read:

RL 52.02 (2) COMPLETE ANSWERS; CERTIFICATION. No application shall be processed until all questions appearing on the application are fully completed, and certified as accurate, and sworn to before a notary public, and all required documents are received by the department.

SECTION 8. RL 52.04 (2) (b) is amended to read:

RL 52.04 (2) (b) The bond shall be payable to the ~~state~~ department of regulation and licensing for the benefit of purchasers of stored property or their assignees.

SECTION 9. RL 52.04 (2) (d) is created to read:

RL 52.04 (2) (d) The bond shall remain in effect throughout the time that the warehouse remains approved by the department and the warehouse keeper shall submit a copy of each bond renewal certificate to the department.

SECTION 10. RL 53.02 (3) is amended to read:

RL 53.02 (3) COMPLETE ANSWERS; CERTIFICATION. No request for approval shall be processed until all questions appearing on the application are fully completed, ~~and certified as accurate, and sworn to before a notary public,~~ the applicant has signed a statement confirming the accuracy of the information provided in the application, and all required documents are received by the department.

SECTION 11. RL 54.04 (1) (b), (3) and (4) are amended to read:

RL 54.04 (1) (b) Publicly traded preferred or common stock of regulated utilities in the United States whose debt is rated AA or above by Standards & ~~Poors~~ Poor's or by Moody's Investors Services. Once the debt rating of the issuing utility drops below an A rating and remains below that rating for 2 consecutive quarters, the cemetery authority shall divest those instruments within 180 days or proceed under par. (e).

(3) No cemetery authority may invest in any entity or company in which an officer or trustee of the cemetery authority ~~has more than a 5% ownership interest~~ is a shareholder who beneficially owns, holds or has the power to vote 5% or more of any class of securities issued by the entity or company.

(4) No cemetery authority may invest in any entity or company in which a spouse or child of an officer or trustee of the cemetery authority or other family member who receives one-half of his or her support from an officer or trustee ~~shall have more than a 5% ownership interest~~ is a shareholder who beneficially owns, holds or has the power to vote 5% or more of any class of securities issued by the entity or company.

SECTION 12. RL 54.05 (2) and (3) are amended:

RL 54.05 (2) If the affidavit submitted to the department pursuant to sub. (1) lists investments in classes other than those described in s. RL 54.04 (1) (a) to (d), the affidavit shall be accompanied by a ~~sworn~~ written statement by a licensed investment advisor or a licensed securities broker, stating his or her belief that such investments will provide safety equal to or greater than the investment classes described in s. RL 54.04 (1) (a) to (d).

(3) If the investment proposal meets the criteria set forth in s. RL 54.04, the department may issue a letter of approval. ~~Investments which are approved~~ A decision by the department not to approve an alternative investment may be appealed under ch. RL 1.

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(END OF TEXT OF RULE)  
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The repeal of s. RL 50.05 of this order applies to annual reports filed on or after January 1, 1998. The remainder of the rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register pursuant to s. 227.22 (2) (intro.), Stats.

Dated \_\_\_\_\_

Agency \_\_\_\_\_

Marlene A. Cummings, Secretary  
Department of Regulation and Licensing

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00

FINAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

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3/19/97

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC  
FORM 2

***RULES CLEARINGHOUSE***

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 96-193**

AN ORDER to repeal RL 50.03 and 50.05; to renumber chapter RL 50; to renumber and amend RL 50.02; to amend RL 52.02 (2), 52.04 (2) (b), 53.02 (3), 54.04 (1) (b), (3) and (4) and 54.05 (2) and (3); and to create chapter RL 50 and 52.04 (2) (d), relating to the regulation of cemetery authorities, cemetery salespersons and preneed sellers of cemetery merchandise.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

12-18-96 RECEIVED BY LEGISLATIVE COUNCIL.

01-21-97 REPORT SENT TO AGENCY.

RS:RW;jt;kjf

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)] -

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 96-193

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

### 2. Form, Style and Placement in Administrative Code

SECTIONS 1 and 2 of the rule should be restructured in the following format:

SECTION 1. Chapter RL 50 (title) and RL 50.01 and 50.02 are renumbered ch. RL 51 (title) and RL 51.01 and 51.02, and RL 51.02, as renumbered, is amended to read:

SECTION 2. RL 50.03 is repealed.

SECTION 3. RL 50.04 is renumbered RL 51.03.

SECTION 4. RL 50.05 is repealed.

SECTION 5. RL 50.06 is renumbered RL 51.04.

### 5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. RL 50.02, it is not clear whether the limit on sales applies to 10 sales of cemetery lots or mausoleum spaces or a combined total of 10. Use of the term "total" in the section would indicate the agency intends the provision to apply to a combined total of sales. However, in s. RL 50.03 (1) (e), a parallel provision omits the term "total" from the reference to the sales limit. This should be clarified in the final rule.

b. In s. RL 50.03 (1) (d), does the term "professional services" refer to services rendered in connection with cemetery operations or does it refer to any type of professional services? If the latter, to what type of professional services does the term refer?

c. Under s. RL 53.02 (3), as amended, is there a need to indicate how the applications will be "certified as accurate"?

d. In s. RL 54.05 (2), it appears that the word "that" following the word "stating" should be deleted, since it is not contained in the current text of the rule.

e. The agency may wish to consider a delayed effective date or initial applicability provision to assure compliance with the revised standards. In particular, it may be useful for applicants who must change their bonds from being payable to the state to being payable to the Department of Regulation and Licensing under s. RL 52.04 (2) (b).