

Chapter FD 2

STANDARDS OF PRACTICE

<p>FD 2.01 Authority and intent. FD 2.02 Definitions. FD 2.03 Operation of a funeral establishment. FD 2.04 Discrimination. FD 2.05 Business telephone listings and advertising. FD 2.06 Supervision of apprentices.</p>	<p>FD 2.07 Changes in apprenticeship assignment. FD 2.08 Business practices. FD 2.09 Commission prohibited. FD 2.10 Sanitation FD 2.11 Radioactive materials. FD 2.13 Confidentiality.</p>
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Note: Chapter FDE 2 was renumbered chapter FD 2 under s. 13.93 (2m) (b) 1.. Stats., Register. September. 1993, No. 453.

FD 2.01 Authority and intent. This chapter is adopted pursuant to authority of ss. 15.08 (5) (b), 227.11 and 445.03, Stats., and specifies the minimum standards of operation of funeral establishments and conduct of funeral directors under ch. 445, Stats.

Note: Funeral directors must comply with the standards adopted by the federal trade commission and set forth in 16 CFR 453.

History: Cr. Register. July. 1988, No. 391. eff. 8-1-88.

FD 2.02 Definitions. As used in this chapter:

(1) "Funeral arrangements" means the provision of information or advice on selection and cost of merchandise, facilities, equipment or personal services provided for final disposition of a dead human body in the course of formulating a contractual agreement between a funeral director or funeral home and client.

(2) "Funeral services" means the ceremonies held in conjunction with disposition of the dead, including visitation, religious rites, memorials and graveside services.

(3) "Personal supervision" means immediate availability to continually coordinate, direct and inspect at first hand the practice of another.

(4) "Supervision" means regularly to coordinate, direct and inspect the practice of another.

History: Cr. Register. July, 1988, No. 391. eff. 8-1-88; correction in (1) made under s. 13.93 (2m) (b) 12.. Stats., Register. September. 1993, No. 453; am. (1), Register, eff. 12-1-98.

FD 2.03 Operation of a funeral establishment. Even though persons other than licensed funeral directors may own a funeral establishment:

(1) Funeral arrangements may be made only by licensed funeral directors: and

(2) Any other dealings on behalf of the establishment, including the conducting of funeral services, shall be performed only by or under the supervision of licensed funeral directors.

History: Cr. Register. July, 1988, No. 391. eff. 8-1-88.

FD 2.04 Discrimination. No funeral director licensed in Wisconsin, or apprentice funeral director holding a certificate of apprenticeship in this state, or person holding a funeral establishment permit herein, shall deny services or the use of an establishment to any person because of race, color, creed, national origin or ancestry, HIV infection, or sexual orientation; provided, however, that this section shall not apply where a funeral establishment is, for religious reasons, so operated that its services are provided to members of only one religious faith.

History: Cr. Register. June. 1978, No. 270. eff. 7-1-78; renum. from FDE 2.06 and am., Register, July, 1988, No. 391. eff. 8-1-88; am. Register. June. 1996, No. 486, eff. 7-1-96.

FD 2.05 Business telephone listings and advertising. (1) Each funeral establishment shall insure that only true funeral establishment names and addresses as registered with the funeral directors examining board shall appear in telephone listings or other publications and in advertising by any media whatsoever.

ever. A funeral establishment may list under a previous establishment name in a telephone or business directory, provided that the listing contains a reference to the establishment name currently registered with the board.

(2) If the names or pictures of unlicensed persons are used in any form of advertising for a funeral establishment, the advertisement must distinguish between the Wisconsin licensed funeral director and the non-licensed personnel.

History: Cr. Register. June. 1978, No. 270. eff. 7-1-78; renum. from FDE 2.16 and am., Register, July, 1988, No. 391, eff. 8-1-88.

FD 2.06 Supervision of apprentices. (1) Apprentices may engage in the following activities only when under the personal supervision of a licensed funeral director: embalming and other preparing of dead human bodies for burial or transportation, and making funeral arrangements.

(2) Apprentices may conduct funeral services or make removals of bodies under the supervision of a licensed funeral director.

History: Cr. Register. July, 1988, No. 391. eff. 8-1-88.

FD 2.07 Changes in apprenticeship assignment.

(1) Whenever any licensed funeral director discharges an apprentice the funeral director shall within 5 days notify in writing the funeral directors examining board, giving the name and address of the apprentice, and the date of discharge.

(2) Whenever any apprentice leaves his or her apprenticeship at a funeral establishment, the funeral director and apprentice shall within 5 days notify in writing the funeral directors examining board, giving the name and address of the apprentice and date of the apprentice leaving the apprenticeship.

History: Cr. Register. June, 1978, No. 270, eff. 7-1-78; (1) renum. from FDE 2.13 and am., cr. (2), Register, July, 1988, No. 391. eff. 8-1-88.

FD 2.08 Business practices. (1) Each funeral establishment shall offer a broad range of personal services, caskets, merchandise and prices consistent with the needs and desires of the families in the community. Records documenting these needs and desires shall be available for review by the board.

(2) If a funeral director offers package funerals, the funeral director shall provide the consumer with a comparison between the package price and the total cost, calculated on an itemized basis, of the components actually desired by the consumer.

History: Cr. (2), (1) renum. from FDE 2.15 (3) and am., Register, July, 1988, No. 391, eff. 8-1-88.

FD 2.09 Commission prohibited. Except as provided in s. 445.125 (3m), Stats., paying or accepting a commission or a salary based upon the selling price or number of funeral services sold shall be considered unethical and is therefore prohibited.

History: Cr. Register. June. 1978, No. 270. eff. 7-1-78; renum. from FDE 2.12, Register, July. 1988, No. 391, eff. 8-1-88; am., Register, November. 1998, No. 515, eff. 12-1-98.

FD 2.10 Sanitation. (1) All preparation rooms, equipment, instruments and supplies in funeral establishments shall be maintained in a clean and sanitary condition.

(2) All post-mortem procedures shall be performed and all preparation rooms, equipment, instruments and supplies in

funeral establishments shall be maintained in compliance with the terms and conditions set forth in the United States occupational safety and health administration standard for occupational exposure to blood-borne pathogens under 29 CFR 19 10.1030. In cases of HIV infection, after the body has been prepared in accordance with s.HFS 136.04, the usual and customary procedures may be followed for restoration and cosmetology. Following embalming and body preparation, no special precautions need to be observed during visitation.

History: Cr. Register, July, 1988, No. 391, eff. 8-1-88; r. and recr. (2), r. (3). Register, June, 1996, No. 486, eff. 7-1-96; am.(Z), Register, November, 1998, No. 515, eff. 12-1-98.

FD 2.11 Radioactive materials. A funeral director or embalmer who takes possession of a dead human body which

might possibly contain radioisotope must take **all** necessary steps to protect the members of the staff who are called upon to handle the body.

History: Cr. Register, June, 1978, No. 270, eff. 7-1-78; renum. from FDE 2.17 and am., Register, July, 1988, No. 391, eff. 8-1-88.

FD 2.12 Renewal of Wisconsin licenses of out-of-state funeral directors. History: Emerg. cr. eff. 1-1-86; cr. Register, July, 1986, No. 367, eff. 8-1-86; renum. from FDE 2.18, Register, July, 1988, No. 391, eff. 8-1-88; renum. to FD 1.11, Register, November, 1998, No. 515, eff. 12-1-98.

FD 2.13 Confidentiality. All personnel involved in the post-mortem care of the deceased shall be informed of the **confidentiality** provisions under s. 252.15 (5), Stats., and the consequences of violating these confidentiality provisions.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

Chapter FD 3

RULES OF CONDUCT

FD 3.01 Authority and intent.

FD 3.02 Unprofessional conduct

Note: Chapter FDE 3 was renumbered chapter FD 3 under § 13.93 (2m) (b) 1., Sm., Register, **September**, 1993, No. 453.

FD 3.01 Authority and intent. This chapter is promulgated under the authority of ss. 15.08 (5) (b), 227.11 and 445.03, Stats., to interpret and contribute to the implementation of s. 445.13 Stats., relating to grounds for discipline of funeral directors, funeral director apprentices and holders of funeral establishment permits.

History: Cr. Register, July, 1988, No. 391, eff. 8-1-88.

FD 3.02 Unprofessional conduct. Any occurrence of the following shall constitute unprofessional conduct by a licensed funeral director, registered apprentice funeral director or owner of a funeral establishment:

(1) Violating or aiding and abetting a violation of any state or federal law substantially related to the practice of funeral directing.

(2) Violating any of the standards of practice set forth in ch. **FD 2**.

(3) Giving misleading or deceptive information to family or persons involved in the arranging of a funeral of final disposition including, but not limited to, information on: funeral costs, burial agreements, legal requirements or religious propriety.

(4) Performing of any funeral director duty while under the influence of alcohol or controlled substances. Controlled substances are listed in ch. 961, Stats.

(5) Refusing to comply with a duly authorized request for information by the board in a timely manner, or falsifying records of any kind which are made public or requested by the board. There is a rebuttable presumption that a person who takes more than 30 days to provide information requested by the board has not acted in a timely manner.

(6) Providing and performing the services of funeral directing or embalming in a manner which falls below minimal standards established by statute, rule or practice in the profession.

(7) Disclosing confidential information obtained in the performance of **official** duties.

(8) Performing services or providing merchandise not authorized for which charges are made; unless authorization for such items as removal or preparation of remains was not obtained because next of kin or other person responsible for payment of charges could not be located within a reasonable time.

(9) Engaging in misleading or deceptive conduct in the conduct of business or the profession.

(10) Failing to demonstrate respect for the sanctity of human remains or for the feelings of individuals involved in the grieving process.

(11) Failing to provide to the depositor, within 15 working days of receipt of a payment, written confirmation of receipt and deposit of payment made pursuant to a funeral trust agreement in accordance with s. 445.125 (1) (b), Stats. Such written confirmation shall include the name of the bank, savings bank, trust company, savings and loan association or credit union, the account number, the date of deposit, and a copy of the deposit slip or other documentary evidence of a payment deposited.

(12) Engaging in solicitation. A funeral director may not initiate written communication, personal or telephone contact for the purpose of obtaining professional employment with persons known to be in need of such services, or where the need of funeral services is imminent.

(13) Engaging in inappropriate sexual contact with clients of the funeral establishment.

(14) Engaging in unsolicited communications to the board or any board member regarding a matter under investigation by the board. Nothing in this section shall prohibit a licensee from addressing communication on a matter under investigation to the division of enforcement or other appropriate department personnel.

(15) Failing to transfer control over s. 445.125 trust funds pursuant to the depositor's written request made during the lifetime of the potential decedent. Burial trust funds are not the property of the funeral director named as beneficiary under the trust agreement. A funeral director may not impede the inter vivos designation of a different beneficiary by withholding delivery of a passbook or other indicia of control over the funds, or by other behavior.

(16) Failure by the holder of a funeral establishment permit, upon the closing of the funeral establishment, to notify all depositors of funeral trust agreements of the closing of the establishment. Notification **shall** be in writing and shall be mailed or personally delivered to the depositor or the depositor's representative within 15 days of the date that the establishment ceases its operation.

(17) Violating or attempting to violate any term, provision, or condition of any order of the board.

History: Cr. (1), (2), (8), (9), (12) to (16); (intro.), (3) to (7), (9) and (11) renum. from FDE3.01 (intro.), (1), (3) to (6), (8) and (11) and am. (3) to (6) and (9). Register, July, 1988, No. 391, eff. 8-1-88; cr. (17). Register, September, 1993, No. 453, eff. 10-1-93; am. (4), (1), (11) and (13), Register, November, 1998, No. 515, eff. 12-1-98.

Chapter FD 4

CONTINUING EDUCATION REQUIREMENTS

m 4.01 Authority.
FD 4.02 Definitions
m 4.03 Continuing education

FD 4 04 Approval of continuing education programs.
FD 4 05 Exemption.

Note: Chapter FDE 5 was renumbered chapter FDE 4 under s. 13.93 (2m)(b)1., Stats., Register, July, 1988, No. 391, eff. 8-J-88. Chapter FDE 4 was renumbered chapter FD 4 under s. 13.93 (2m)(b)1., Stats., Register, September, 1993, No. 453.

FD 4.01 Authority. The rules in this chapter are adopted under authority in ss. 15.08 (5) (b), 227.11 and 445.06, Stats.

History: Cr. Register, July, 1986, No. 367, eff. 8-J-86; correction made under s. 13.93(2m)(b)7., Scan., Register, September, 1993, No. 453.

FD 4.02 Definitions. In this chapter,

- (1) "Board" means the funeral directors examining board.
- (2) "Evidence of attendance" means an official transcript, student grade report or a written form furnished by a program provider which specifies satisfactory completion of a continuing education program.
- (3) "Funeral director" means a person as defined in s. 445.01 (5), Stats.
- (4) "Program provider" means an educational institution, governmental agency, professional or trade association or foundation or a private firm or individual whose primary function is continuing education.

History: Cr. Register, July, 1986, No. 367, eff. 8-1-86.

FD 4.03 Continuing education. (1) Every funeral director, as defined in s. 445.01 (5), Stats., shall complete at least 15 hours of approved continuing education programs in each biennial registration period, specified under s. 445.06, Stats., except as described in s. FD 4.05.

(2) Approved continuing education hours may apply only to the biennial registration period in which the hours are acquired.

(3) To obtain credit for completion of the continuing education requirement, a funeral director shall submit certificates of attendance issued by the program provider or other evidence of attendance satisfactory to the board.

(4) At least 3 hours of the 15-hour requirement shall be in approved programs in the subject area specified in s. FD 4.04 (1) (a) 2.

(5) No more than 3 hours of the 15-hour requirement may be in approved programs in the subject area specified in s. FD 4.04 (1) (a) 3.

(6) No more than 2 hours of the 15-hour requirement may be acquired for presentation of any continuing education program by a funeral director.

(7) No more than 10 hours of the 15-hour requirement may be acquired through participation in non-contact home study programs.

(8) Each contact or clock hour or lesson or tape completed in a home study program is equivalent to 1.0 continuing education credit hour.

(9) Continuing education credit for participation in a multiple-day program, in which each day of the program is a prerequisite for each succeeding day, shall be granted only for completion of the entire program.

(10) A funeral director may receive credit for attendance at a continuing education program which received approval after he

or she attended the program, if the funeral director provides evidence of attendance satisfactory to the board.

History: Cr. Register, July, 1986, No. 367, eff. 8-J-86; am. (7), Register, November, 1998, No. 515, eff. 12-1-98.

FD 4.04 Approval of continuing education programs. (1) To obtain approval of a continuing education program, the program provider shall submit an application to the board on a form provided by the board which shall include:

(a) The program relates to one or more of the following subject content areas:

1. Grief counseling or communication.
2. Professional conduct, business ethics or legal aspects specifically related to practice in the profession.
3. Business management concepts relating specifically to delivery of services to a consumer.
4. Technical or practical aspects of the profession;

(b) The program is available to all funeral directors regardless of membership in or affiliation with any organization; and,

(c) The program provider of the continuing education program agrees to monitor the continuous attendance of participants and to furnish to each participant evidence of having attended and completed the program at the location of the program, or

(d) The program provider of a home-study continuing education program includes in the program a method satisfactory to the board of determining a participant's successful completion of the home study program.

(2) An application for a continuing education program shall include all of the following:

- (a) Date and location of the program.
- (b) Time segments scheduled in the program for presentation of subject areas specified in sub. (2).
- (c) Name and title of the instructor.
- (d) Name and title of the person requesting program approval on behalf of the provider.

Note: Forms are available upon request to the board office. PO Box 8935, Madison, WI 53708.

(3) A separate application shall be submitted for each continuing education program. Approval of a continuing education program expires on December 31 of each odd-numbered year.

(4) A program provider shall apply for approval of a continuing education program at least 30 days prior to its presentation.

(5) A continuing education program may include subject content other than that specified in sub. (1); however, the board shall limit its approval only to that part and time segments of the program which relate to subject areas specified in sub. (1).

(6) A home study program or course taken for academic credit shall be eligible for credit if the program or course relates to subject areas specified in sub. (1) and meets all other requirements in this section.

(7) In-service continuing education programs sponsored by a funeral establishment are not eligible for credit unless the pro-

grams are available to all licensed funeral directors and meet all other requirements in this section.

History: Cr. Register, July, 1986, No. 367, eff. 8-1-86; **correction in** (6) made under s. 13.93 (2m) (b) 12., Stats. Register, September, 1993, No. 453; am. (2) (intro.), Register, November, 1998, No. 515. **eff. 12-1-98.**

FD 4.05 Exemption. Any funeral director who holds a certificate in good standing granted under s. 445.06, Stats., shall be exempt from meeting the continuing education requirement for

the duration of the period that the funeral director is not engaged in professional practice. A funeral director who holds a certificate shall notify the board and shall submit proof of having completed 15 hours of approved continuing education programs in the 2-year period immediately preceding notification to the board of his or her intent to return to professional practice in a licensed funeral establishment.

History: Cr. Register, July, 1986, No. 367, eff. 8-1-86.

Chapter FD 5

LICENSURE BY RECIPROCITY

FD 5.01 Qualifications.

FD 5.02 Application procedure.

Note: Chapter FDE 5 was renumbered chapter FD 5 under s 13.93 (2m) (b) 1., Stats, Register, September, 1993, No 453.

FD 5.01 Qualifications. A person licensed as a funeral director in another state may obtain a license as a funeral director under this chapter if the applicant meets all of the following criteria:

(1) Has met requirements in another state substantially equal to those in this state.

(2) Has never been disciplined by the licensing authority in any other state, territory or country for any misconduct or violations which demonstrate lack of competence to practice as a funeral director in Wisconsin as determined by the board.

(3) Is not under any current investigation and is not a party in a proceeding involving a complaint against the applicant which relates to the applicant's practice as a funeral director.

(4) Does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, Stats.

(5) Has satisfactorily completed 9 months or more of instruction in a prescribed curriculum in funeral service education offered by an educational institution accredited by the American board of funeral service education or deemed to be equivalent by the board.

(6) Passes the board's examination on Wisconsin law. The board shall determine the passing grade after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing grade for the examination at that point which represents minimum acceptable competence in the profession.

History: Cr. Register, December, 1989, No. 408, eff. 1-1-90, am., Register, November, 1998, No. 515, eff. 12-1-98.

FD 5.02 Application procedure. (1) An applicant for a license under this chapter shall file an application with the board no later than 30 days prior to the examination under s. 445.08 (4) (a), Stats. The applicant shall pay the costs and fees necessary to obtain the information required in subs. (2) and (4). The application shall be on the board's form and include:

(a) Information relating to the requirements in s. FD 5.01 and the signature of the applicant.

(b) The fee specified under s. 440.05 (2), Stats.

Note: Application forms are available upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

(2) The applicant shall request that the school of mortuary science attended by the applicant forward to the board a certified transcript of the applicant's record.

(3) The applicant shall request the authorized official in each state in which the applicant holds or has held a license to forward to the board a certified statement showing the qualifications upon which the license was granted, the current status of the applicant's license, and a description of any complaints filed against the applicant and the disposition of all complaints.

(4) Applicants who have a pending criminal charge or have been convicted of any crime shall provide the board all related information necessary for the board to determine whether the circumstances of the pending criminal charge or conviction are substantially related to the circumstances of the licensed activity.

(5) An application is not complete until all the information described in this section is received by the board. An applicant shall be scheduled to take the examination after completing sub. (1). However, the board shall not grant a license under this section until the application is complete.

History: Cr. Register, December, 1989, No. 408, eff. 1-1-90.

Chapter FD 6

BURIAL AGREEMENTS FUNDED WITH LIFE INSURANCE

<p>FD 6 01 Authority and purpose. FD 6.02 Definitions. FD 6.03 Registration requirements. FD 6.04 change of employment. FD 6 05 Training requirements. FD 6.06 Approval of educational training programs.</p>	<p>FD 6 07 Standards for burial agreements funded by life insurance proceeds. FD 6.08 Contractual standards for agents and operators of funeral establishments. FD 6.09 Requirements for terminating a burial trust. FD6 10 Solicitation of prospective purchasers of burial agreements funded with the proceeds of a life insurance policy.</p>
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FD 6.01 Authority and purpose. The rules in this chapter are adopted by the board under the authority of ss. 15.08 (5) (b), 227.11 (2), 445.125 (3m) (b) 2. b. and (j) 1. and 2., Stats., and govern the registration and regulation of agents.

History: Cr. Register, October, 1997, No. 502. eff. 11-1-97.

FD 6.02 Definitions. In this chapter:

(1) "Agent" means an authorized representative of a funeral director or an operator of a funeral establishment who sells or solicits the sale of a burial agreement that is funded with the proceeds of a life insurance policy.

(2) "Board" means the funeral directors examining board.

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

(4) "Evidence of attendance" means an official transcript, student grade report, or a written form furnished by a program provider which specifies satisfactory completion of an educational training program.

(5) "Program provider" means an educational institution, governmental agency, professional or trade association or foundation or a private firm or individual whose function is educational training programming.

History: Cr. Register, October, 1997, No. 502. eff. 11-1-97.

FD 6.03 Registration requirements. (1) A licensed funeral director or operator of a funeral establishment shall submit an application with all of the following information:

(a) The identity of any agent authorized by s. 445.125 (3m), Stats., to sell or solicit the sale of a burial agreement that is funded with the proceeds of a life insurance policy on behalf of the licensed funeral director or operator of a funeral establishment.

(b) The agent's Wisconsin life insurance intermediary's license number and expiration date, and the insurer or insurers whom the agent is listed to represent.

(c) Evidence satisfactory to the board that the agent has successfully completed at least 20 hours of approved educational training as provided in s. FD 6.05. An agent who is a Wisconsin licensed funeral director and a Wisconsin licensed insurance intermediary shall be exempt from having to complete the 20 hours of approved educational training as provided in s. FD 6.05.

(2) A copy of each contract between an agent and an operator of a funeral establishment shall accompany the application.

(3) The application shall be accompanied by the fee authorized in s. 440.05 (1), Stats.

(4) Upon receipt of an application and payment of the fees, the board shall issue a registration card to an agent.

(5) No agent may sell or solicit the sale of a burial agreement funded with the proceeds of a life insurance policy unless he or she is registered by the board.

Note: Application forms are available upon request to the Funeral Directors Examining Board, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register, October, 1997, No. 502. eff. 11-1-97.

FD 6.04 Change of employment. A licensed funeral director or operator of a funeral establishment shall notify the board within 30 calendar days of the termination of any contract he or she has with an agent.

History: Cr. Register, October, 1997, No. 502. eff. 11-1-97.

FD 6.05 Training requirements. (1) Educational training shall include the following subjects:

(a) The funeral industry practice regulations of the federal trade commission, and any other applicable federal statutes and regulations related to the funeral service industry including, but not limited to, the occupational safety and health act.

(b) The funeral industry practice regulations contained in the Wisconsin statutes and administrative code including, but not limited to, burial agreements and any applicable impoverishment provisions.

(c) The ethics of funeral service marketing.

(d) Funeral service and final disposition options.

(e) Funding mechanisms for burial agreements.

(f) Financial benefits available at the time of death including, but not limited to, veteran's benefits, social security income, pensions, and human services benefits.

(g) Grief communication skills.

(2) Educational training credit for participation in a multiple-day program, in which each day of the program is a prerequisite for each succeeding day, shall be granted only for completion of the entire program.

(3) Credit for attendance at an educational training program shall be given to an agent if all of the following apply:

(a) The program has been approved by the board under s. FD 6.06.

(b) The agent provides evidence of attendance satisfactory to the board.

(c) The agent takes and successfully passes a comprehensive examination administered by the program provider.

History: Cr. Register, October, 1997, No. 502. eff. 11-1-97.

FD 6.06 Approval of educational training programs.

(1) To obtain approval of an educational training program, the program provider shall submit an application to the board on a form provided by the board which shall include evidence of all of the following:

(a) Information that the program relates to the following subject areas:

1. The funeral industry practice regulations of the federal trade commission, and any other applicable federal statutes and regulations related to the funeral service industry including, but not limited to, the occupational safety and health act.

2. The funeral industry practice regulations contained in the Wisconsin statutes and administrative code including, but not limited to, burial agreements and applicable impoverishment provisions.

3. The ethics of funeral service marketing.

4. Funeral service and final disposition options.
 5. Funding mechanisms for burial agreements.
 6. Financial benefits available at the time of death including, but not limited to, veteran's benefits, social security income, pensions, and human services benefits.
 7. Grief communication skills.
- (b) The program is available to all agents regardless of membership or affiliation with any organization.
- (c) The program provider agrees to monitor the continuous attendance of participants and to furnish to each participant with evidence of attendance.

(2) A separate application shall be submitted for each educational training program. Approval of an educational training program expires on December 31 of each odd-numbered year.

(3) A program provider shall apply for approval of an educational training program at least 30 days prior to its presentation.

(4) An educational training program may include subject content other than that specified in sub. (1); however, the board shall limit its approval only to that part and time segments of the program which relate to subject areas specified in sub. (1).

(5) In-service educational training programs sponsored by a funeral establishment or insurance company are not eligible for credit unless the programs are available to all agents and meet all other requirements in this section.

Note: **Application forms are available** upon request to the Funeral Directors Examining Board, 1400 East Washington Avenue, R.O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register, October, 1997, No. 502, eff. 11-1-97.

FD 6.07 Standards for burial agreements funded by life insurance proceeds. A burial agreement shall be in written form that is clear and conspicuous, and shall include all of the following:

(1) The identity of the funeral establishment and the insurer or insurers that the agent represents.

(2) The identity of the funeral establishment that will be used to provide the funeral services or merchandise under the agreement.

(3) The nature and extent of any price guarantees for the funeral merchandise or funeral services, or any other guarantees that exist.

(4) Information that a life insurance policy is involved in or connected to, or is being used to fund, the burial agreement.

(5) The type of insurance instrument that is being used to fund the burial agreement.

(6) The effect on the burial agreement of all of the following:

(a) Changing the life insurance policy, including, but not limited to, changing the assignment of the policy proceeds, changing the beneficiary designation, or changing the use of the proceeds.

(b) Any penalties incurred by the policyholder as a result of failing to make premium payments.

(c) Any penalties incurred or money received as a result of cancellation or surrender of the life insurance policy.

(7) A statement of funeral goods and services selected under the burial agreement and the price of each item or service provided under the burial agreement, including a statement as to whether the purchase price of the funeral merchandise and services are guaranteed at the time the burial agreement is arranged or whether the price is to be determined at the time of need. If the price of funeral merchandise or services is to be determined at the time of need, those prices may not exceed the prices as set forth in the funeral establishment's general price list required under the funeral industry practices regulations of the federal trade commission.

(8) All information concerning what occurs, and whether any entitlements arise, if there is a difference between the proceeds of

the life insurance policy and the amount of money actually needed to fund the burial agreement.

(9) Any restrictions, including geographic restrictions, or penalties relating to delivery or performance under the burial agreement, including any **restrictions** or penalties relating to the inability of the operator of the funeral establishment to perform.

(10) A statement as to whether the sales commission or other form of compensation is being paid to the agent who sells or solicits the sale of a burial agreement and the life insurance used to fund the burial agreement and, if so, the identity of any other persons to whom the commission or other compensation is paid.

(11) The following statement in not less than 12-point bold-face type: **"Burial agreements are regulated by the Wisconsin Funeral Directors Examining Board. Should you have a complaint, please contact the Board at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708 or by telephone at (608) 266-5511."**

History: Cr. Register, October, 1997, No. 502, eff. 11-1-97.

FD 6.08 Contractual standards for agents and operators of funeral establishments. A copy of each contract between an agent and an operator of a funeral establishment shall be sent to the board along with the agent's application for registration as required in s. FD 6.03. A contract between an agent and an operator of a funeral establishment shall include all of the following:

(1) A statement that the agent is currently licensed as a life insurance intermediary in Wisconsin and is currently listed with an insurer or insurers who is authorized to sell life insurance used to fund a burial agreement in Wisconsin.

(2) A statement that the agent has received the required training pursuant to s. 445.125 (3m) (b) 2. a., Stats., and will obtain any additional training as required by the board.

(3) A statement that the agent shall immediately notify the operator of the funeral establishment at any time while the contract between the agent and operator of the funeral establishment is in effect if any of the following occur:

(a) The agent's life insurance license is suspended or revoked.

(b) There are any changes to listings with insurers.

(4) A statement that the agent will abide by the funeral industry practices regulations of the federal trade commission, and all applicable Wisconsin statutes and rules.

(5) A statement as to whether the sales commission or other form of compensation is being paid to the agent who sells or solicits the sale of a burial agreement and the life insurance used to fund the burial agreement and, if so, the identity of any other persons to whom the commission or other compensation is paid.

History: Cr. Register, October, 1997, No. 502, eff. 11-1-97.

FD 6.09 Requirements for terminating a burial trust. Written notice shall be sent to the board by an agent, licensed funeral director or operator of the funeral establishment when a consumer terminates a trust as established under s. 445.125 (1), Stats. The following information shall be included in the written notice that an agent, funeral director, or operator of a funeral establishment gives to a consumer and to the board when the consumer terminates a burial trust and converts to a burial agreement funded by the proceeds of a life insurance policy:

(1) **The name of the individual for whom the existing burial trust is intended**

(2) **The date on which the original burial trust agreement was made.**

(3) **The name of the funeral establishment that was designated on the original burial trust agreement.**

(4) **The name of the bank, trust company, savings and loan association, or savings bank in which the burial trust funds have been held.**

- (5) The current value of the trust.
- (6) The name of the life insurance company issuing the life insurance policy intended to fund the burial agreement.
- (7) The name of the agent who sells the life insurance policy.
- (6) The name of the funeral establishment that will be designated on the life insurance policy as the beneficiary.

History: Cr. Register, October, 1997, No. 502. eff 1 1-1-97.

FD 6.10 Solicitation of prospective purchasers of burial agreements funded with the proceeds of a life insurance policy. (1) No funeral director, owner of a funeral establishment, or agent may initiate any telephone call using an automatic telephone dialing system or an artificial or prerecorded voice for the purpose of selling or soliciting a burial agreement funded by the proceeds of a life insurance policy to any of the following:

- (a) The telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment.
 - (b) Any residential or business telephone line without the prior express written consent of the called party.
 - (c) The residential or business telephone of a person or relative of a person whose death is imminent or appears to be imminent.
- (2) A funeral director, owner of a funeral establishment, or an agent may initiate a telephone call by live-voice for the purpose of selling or soliciting a burial agreement funded with the proceeds of a life insurance policy only if all of the following apply:
- (a) Written notice is sent by a funeral director, owner of a funeral establishment, or agent to the prospective customer at least 10 days in advance of the call.
 - (b) Written notice shall advise the customer of all of the following:

- 1. The name of the funeral director, owner of a funeral establishment, or agent who will be calling, the name of the person or entity upon whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted.
- 2. That the call will only be made between the hours of 9:00 a.m. to 7:00 p.m. central standard time.
- 3. The specific reason for the call in no less than **12-point type**.
- 4. That a prospective purchaser may call the person or entity upon whose behalf the call is being made to request that no call be made. This statement shall be in no less than **14-point, bold-faced type**.

(3) A funeral director, owner of a funeral establishment, or agent who sells or solicits the sale of burial agreements funded by the proceeds of life insurance as in sub. (2) shall do all of the following:

- (a) Immediately provide the called party with the name of the funeral director, owner of a funeral establishment or agent, the name of the person or entity upon whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted.
- (b) Have a written policy available, upon demand, for maintaining a do-not-call list.
- (c) Record the name and telephone number of persons who request placement on the do-not-call list at the time the request is made. No further calls may be made to a person who has requested placement on the **do-not-call** list.

(4) A funeral director, owner of a funeral establishment, or agent may by live voice contact:

- (a) A prospective purchaser of a burial agreement funded by the proceeds of a life insurance policy or the prospective purchaser's authorized representative, in a hospital, health care facility, elderly home or similar establishment, only if the prospective purchaser or the prospective purchaser's authorized representative requests the contact.
- (b) A prospective purchaser of a burial agreement funded by the proceeds of a life insurance policy whose death is imminent or appears to be imminent only if the prospective purchaser or the prospective purchaser's authorized representative requests the contact.

(5) Unless the board substantially modifies this section, no funeral director, owner of a funeral establishment, or agent may initiate on or after January 1, 2000, any telephone call by live-voice or by using an automatic telephone dialing system or an artificial prerecorded voice for the purpose of selling or soliciting a burial agreement funded by the proceeds of a life insurance policy to any of the following:

- (a) The telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment.
- (b) Any residential or business telephone line without the prior express written consent of the party.
- (c) The residential or business telephone line of a person or relative of a person whose death is imminent or appears to be imminent.

History: Cr. Register, October, 1997, No. 502. eff. 1 1-1-97.

Chapter RL 50

AUTHORITY, DEFINITIONS AND APPLICATIONS FOR REGISTRATION

RL50.01 Authority.
RL 50.02 Definition.

RL 50.03 Applications for cemetery authority, cemetery salesperson and pre-need seller.

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

History: Cr. Register, July, 1997, No. 499, eff. 8-1-97.

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.

History: Cr. Register, July, 1997, No. 499, eff. 8-1-97.

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.

History: Cr. Register, July, 1997, No. 499, eff. 8-1-W.

Chapter RL 51

FILING OF ANNUAL REPORTS BY CEMETERY AUTHORITIES AND PRENEED SELLERS

RL51.01 Authority.
RL51.02 Filing of annual reports.

RL 51.03 Reporting period.
RL 51.04 Religious society exemption.

RL 51.01 Authority. This chapter is adopted pursuant to ss. 157.62 (2) and (7), 157.63, 227.11, and 440.92 (6) (k), Stats.

History: Cr. Register, November, 1992, No. 443, eff. 12-1-92; **renum. from RL 50.01, Register, July, 1997, No. 499, eff. 8-1-97.**

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 April 1 of each year.

History: Cr. Register, November, 1992, No. 443, eff. 12-1-92; **renum. from RL 50.02 and am., Register, July, 1997, No. 499, eff. 8-1-97.**

RL 51.03 Reporting period. The annual reports and certifications in lieu of annual reports shall be made on a calendar-year basis unless the department, upon request, approves a differ-

ent reporting period.

History: Cr. Register, November, 1992, No. 443, eff. 12-1-92; **renum. from RL 50.04, Register, July, 1997, No. 499, eff. S-1-97.**

RL 51.04 Religious society exemption. A cemetery authority of a cemetery that is affiliated with a religious society organized under ch. 187, Stats., or that religious society may file a certification in lieu of an annual report under s. 157.63 or 440.92 (9), Stats. The certification shall be filed on or before the 60th day after the last day of the reporting period.

Note: Forms for the annual report and certification may be obtained upon request from and shall be filed with the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register, November, 1992, No. 443, eff. 12-1-92; **renum. from RL 50.06, Register, July, 1997, No. 499, eff. 8-1-97.**

Chapter RL 52

WAREHOUSES STORING CEMETERY MERCHANDISE SOLD UNDER A PRENEED SALES CONTRACT

RL 52.01 Authority.
 RL 52.02 Applications.
 RL 52.03 Approval of warehouses located in this state.

RL 52.04 Approval of warehouses located outside this state.
 RL 52.05 Term of approval.
 RL 52.06 Cancellation of approval.

RL 52.01 Authority. This chapter is adopted pursuant to ss. 227.11 and 440.92 (7), Stats.

History: Cr. Register, November, 1992, No. 443, eff. 12-1-92.

RL 52.02 Applications. (1) FORMS. Applications for approval of a warehouse to store cemetery merchandise sold under a preneed sales contract shall be made on forms provided by the department and shall be delivered through the mails or otherwise to the department's office.

Note: Application forms may be obtained upon request from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(2) COMPLETE ANSWERS: CERTIFICATION. No application shall be processed until all questions appearing on the application are fully completed and certified as accurate, and all required documents are received by the department.

(3) DETERMINATION OF APPROVAL The department shall provide the applicant with its determination upon the application within 60 days after receipt of the completed application and required documents.

History: Cr. Register, November, 1992, No. 443, eff. 12-1-92; am (2), Register, July, 1997, No. 499, eff. 8-1-97.

RL 52.03 Approval of warehouses located in this state. The department shall approve a warehouse located in this state only 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, Stats. Proof of licensure as a public warehouse keeper shall be made through the submission of a copy of the current license with the application.

History: Cr. Register, November, 1992, No. 443, eff. 12-1-92.

RL 52.04 Approval of warehouses located outside this state. The department shall approve a warehouse located outside this state upon the following conditions:

(1) Submission of proof that the warehouse is authorized to store cemetery merchandise within its state of location. Proof of such authorization may be made through the submission of a copy of the current license, permit, certificate, registration or other document issued by the agency regulating warehouses in that state, or through the submission of such other information or statements acceptable to the department.

(2) (a) The filing with the department of 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.

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

(c) The amount of the bond shall be in an amount approved by the department, and in no case less than 100% of the wholesale value of the cemetery merchandise that is stored and to be transported to this state as of the date of the application.

(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.

History: Cr. Register, November, 1992, No. 443, eff. 12-1-92; am. (2)(b), cr. (2)(d), Register, July, 1997, No. 499, df. 8-1-97.

RL 52.05 Term of approval. An approval of a warehouse by the department entitles the warehouse to store cemetery merchandise sold under a preneed sales contract for a period of one year following the issuance of the approval.

History: Cr. Register, November, 1992, No. 443, eff. 12-1-92.

RL 52.05 Cancellation of approval. (1) Any approval previously granted by the department may be cancelled upon the occurrence of any of the following:

(a) The failure to maintain the license in this or any other state necessary to operate a warehouse.

(b) The failure of a warehouse located outside this state to maintain the bond required under this chapter. When the department determines that a bond is insufficient, or if the bond lapses or is canceled, the warehouse shall correct the defect within 30 days after written notice from the department and, if the defect is not corrected within that period, the approval of the warehouse automatically rescinds at the expiration of the 30 day period.

(2) The owner or operator of a warehouse shall notify the department within 30 days after the occurrence of any of the events described in sub. (1).

Note: A current list of the names and addresses of all approved warehouses may be obtained from the department's Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register, November, 1992, No. 443, eff. 12-1-92.

Chapter RL 53

CHANGE OF TRUSTEE OF CARE FUNDS AND PRENEED TRUST FUNDS

RL 53.01 Authority.
 RL 53.02 Change of trustee; applications.
 RL 53.03 standards for approval.

RL 53.04 Compliance with terms of approval.
 RL 53.05 Verification of deposit.

RL 53.01 Authority. This chapter is adopted pursuant to ss. 157.11, 157.19 and 227.11, Stats.

History: Cr. Register, November, 1992, 443, eff. 12-1-92.

RL 53.02 Change of trustee; applications. (1) APPROVAL REQUIRED. A cemetery authority or preneed seller who deposits care funds in a financial institution pursuant to s. 157.19 (2) (a), Stats., shall obtain written approval of the department before changing the trustee of a care fund or preneed trust fund.

(2) **FORMS.** Requests for approval of change of trustee shall be made on forms provided by the department and shall be delivered through the mails or otherwise to the department's office.

Note: Forms may be obtained upon request from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, Madison, Wisconsin 53108.

(3) COMPLETE ANSWERS; CERTIFICATION. No request for approval shall be processed until all questions appearing on the application are fully completed, 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.

(4) DETERMINATION OF APPROVAL The department shall provide the applicant with its determination upon the request within 60 days after receipt of the completed application and required documents.

History: Cr. Register, November, 1992, No. 443, eff. 12-1-92; am. (3), Register, July, 1997, No. 499, eff. R-1-97.

RL 53.03 Standards for approval. (1) CARE FUNDS. The department may grant approval for a change of trustee of a care fund to a cemetery authority applying for the change of trustee if the cemetery authority submits evidence that the rights and interests of the beneficiary of the care fund will be adequately protected if the change is approved. Such evidence shall include, but is not necessarily limited to:

(a) The names and addresses of the financial institutions from whom and to whom the care fund is to be transferred.

(b) A statement of the reason for requesting the change of trustee.

(c) The amount to be transferred, the manner or instrument by which the transfer is to be made, and the anticipated date the transfer is to be effectuated.

(d) An affidavit from an officer or director of the financial institution to whom the transfer is requested that it is authorized to act as a financial institution, and is in good standing, in this state.

(e) A statement of any costs which will accrue to the balance of the care fund upon the change of trustee, as well as a statement of the nature and anticipated amounts of any service charges, administrative fees or other costs which will be imposed against the care fund by the proposed trustee.

(2) PRENEED TRUST FUNDS. Preneed sellers applying for the change of trustee of a preneed trust fund shall submit evidence that the rights and interests of the purchaser under the preneed sales contract will be adequately protected if the change is approved, including but not necessarily limited to:

(a) The names and addresses of the financial institutions from whom and to whom the preneed trust fund is to be transferred.

(b) A statement of the reason for requesting the change of trustee.

(c) The amount to be transferred, the maturer or instrument by which the transfer is to be made, and the anticipated date the transfer is to be effectuated.

(d) An affidavit from an officer or director of the financial institution to whom the transfer is requested that its license is in good standing in this state.

(e) A statement of any costs which will accrue to the balance of the preneed fund upon the change of trustee, as well as a statement of the nature and anticipated amounts of any service charges, administrative fees or other costs which will be imposed against the care fund by the proposed trustee.

History: Cr. Register, November, 1992, No. 443, eff. 12-1-92.

RL 53.04 Compliance with terms of approval. The department may approve a change of trustee upon such terms and conditions as deemed necessary to assure that the rights and interests of the beneficiary or purchaser will be adequately protected.

History: Cr. Register, November, 1992, No. 443, eff. 12-1-92.

RL 53.05 Verification of deposit. Within 30 days after the transfer of the care fund or preneed trust fund, the trustee shall submit information to the department verifying the transfer, including the amount deposited, the date the deposit was made, and the account number of the fund.

History: Cr. Register, November, 1992, No. 443, eff. 12-1-92.

Chapter RL 54

APPROVAL OF ALTERNATIVE CARE FUND INVESTMENTS

RL 54.01
RL 54.02
RL 54.03

Authority.
Intent.
Definitions.

RL 54.04
RL 54.05

Criteria.
Procedures.

Note: Chapter RL 54 as it existed on April 30, 1994 was repealed and a new chapter RL 54 was created effective May 1, 1994.

RL 54.01 Authority. This chapter is adopted pursuant to ss. 157.11 (9g) (a) I. c. and 227.11 (2), Stats.

History: G. Register, April, 1994, No. 460, eff. 5-1-94.

RL 54.02 Intent. The intent of this chapter is to **assure** that cemetery authorities which are required to register with the department maintain intact the principal amount in care funds in order to generate sufficient income to maintain cemeteries in perpetuity and to ensure that cemeteries in Wisconsin do not become a financial burden to taxpayers. It is also the intent to prohibit the **officers**, trustees, and the immediate family of the cemetery authority from directly profiting from the investments that are **made** by and on behalf of it.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

RL 54.03 Definitions. As used in this chapter:

(1) "Alternative investment" **means** the use of care funds received from **the** sale of cemetery lots by a cemetery authority to purchase investment instruments, rather than depositing the care funds in a financial institution under s. 157.19, Stats., or with the treasurer of the county or city in which the cemetery is located.

(2) "Care funds" has the meaning given in s. 157.061 (1m), Stats.

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

History: G. Register, April, 1994, No. 460, eff. 5-1-94.

RL 54.04 Criteria. (1) A cemetery authority shall give due consideration to both long term and short term cash flow needs in selecting alternative investments. The following classes of alternative investments are permissible:

(a) Corporate bonds or bonds or other instruments of indebtedness issued or guaranteed by governmental **units** in the United States, provided that the bonds or instruments of indebtedness are rated AA or above by **Standard & Poor's** or by Moody's Investors Services. Once one or more of these instruments 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).

(b) Publicly traded preferred or common stock of regulated utilities in the United States whose debt is rated AA or above by **Standards & 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).

(c) Fully insured certificates of deposit issued by banks, savings and loan associations, or credit unions located in the United States which are federally insured. Certificates of deposit which are **only** partially insured are **permissible** in commercial banks rated BC or above by Thomson Bank Watch, Inc.

(d) Mutual funds, if at least 80% of monies in the mutual fund are invested in one or more of the instruments in pars. (a) to (c).

(e) Such other investments which the department determines will provide safety equal to or greater than the investment classes described in pars. (a) to (d).

(2) A cemetery authority shall consider diversification of investments. No cemetery authority may purchase or otherwise invest in one of the instruments in sub. (1) (a) to (c) if the percentage of the care fund invested in the instruments sold by a specific corporation, governmental unit or financial institution immediately after such purchase or investment will exceed 50% of the total market value of the care fund, except for investments in or guaranteed by the United States government and except for fully insured certificates of deposit in sub. (1) (c).

(3) **No** cemetery authority may invest in any entity or company in which an **officer** or trustee of the cemetery authority 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 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**.

History: G. Register, April, 1994, No. 460, eff. 5-1-94; am. (1) (b), (3) and (4), Register, July, 1997, No. 499, eff. 8-1-97.

RL 54.05 Procedures. (1) An officer, a trustee who has been elected pursuant to s. 157.062, Stats., or a certified public accountant acting on behalf of the cemetery authority shall file an affidavit with the department which identifies the class and amount of each investment and **certifies** that each investment is in compliance with the criteria in s. RL 54.04.

(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 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. A decision by the department not to approve an alternative investment may be appealed under ch. RL 1.

(4) Affidavits are effective for one year and shall be filed with the department annually. The affidavit **shall** certify compliance for the period since the last affidavit was filed except that the initial affidavit need only certify compliance as of the date it is made.

(5) Alternative investments made prior to November 1, 1991, are subject to department approval and the department may require divestiture of any alternative investment which does not meet the criteria in s. RL 54.04. The cemetery authority shall divest such alternative investments within 180 days **following** notification by the department that an alternative investment does not meet the criteria.

(5) After department approval is obtained, the cemetery authority need not obtain further approval to increase the number

of shares or **units** in the same security or investment if the shares or units meet the criteria set forth in s. RL 54.04 (1) (a) to (d), (3) and (4).

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am. (2) and (3), Register, July, 1997, No. 499, eff. 8-1-97.

health and family services relating to communicable diseases, quarantine and causes of death.

History: 1971 c. 301; 1975 c. 39 ss. 653,732 (2); 1975 c. 199; 1977 c. 29,418; 1979 c. 175 s. 29; 1979 c. 221 s. 661; Stats. 1979 s. 445.04; 1981 c. 162,380; 1983 a. 485; 1991 a. 39; 1995 a 27 s. 9126 (19).

445.045 License requirements. (1) To be eligible for an original funeral director's license, a person must meet all of the following requirements:

- (a) Be at least 18 years of age;
- (b) Subject to ss. 111.321, 111.322 and 111.335, not have an arrest or conviction record;
- (d) Have completed 2 academic years of instruction in a recognized college or university, in a course of study approved by the examining board, or have equivalent education;
- (e) Have satisfactorily completed 9 months or more instruction in a prescribed course in mortuary science approved by the examining board at any time after having completed one year of college work or equivalent education;
- (f) Have completed one year of apprenticeship and prescribed in s. 445.095 at any time after having completed one year of college work or equivalent education and either before or after taking the course in mortuary science required by par. (e).
- (g) Have successfully passed a comprehensive examination conducted by the examining board as required by s. 445.04; but such examination may be taken at any time after completion of the college and mortuary school instruction and regardless of the age of the applicant.

(2) The eligibility requirement in sub. (1) shall not apply to:

- (a) Any person to whom a certificate of apprenticeship was issued before October 1, 1959, and who satisfies the legal requirements in effect at the time of the person's registration; or
- (b) Any person who served actively in the armed forces of the United States between August 3, 1951, and October 1, 1959, and who was discharged under conditions other than dishonorable, registers with the examining board within 6 months of the date of discharge, and who satisfies the legal requirements in effect at the time the person entered the armed forces.

History: 1971 c. 213 s. 5; 1971 c. 228 s. 44; 1971 c. 301,307; 1975 c. 39 ss. 654, 654n, 732 (2); 1975 c. 199; 1979 c. 175 ss. 29, 53; 1979 c. 221 ss. 662, 2202 (45); Stats. 1979 s. 445.045; 1981 c. 380; 1981 c. 391 s. 211; 1983 a 485; 1991 a. 316.

445.06 Renewal of licenses. The renewal date and renewal fee for a funeral directors' license are specified under s. 440.08 (2)

(a) Before any renewal license is delivered to any licensed funeral director, proof must be furnished by the applicant, to the satisfaction of the examining board, that the applicant is doing business at a recognized funeral establishment, except that if such applicant is not doing business at a recognized funeral establishment at the time of application for a license, the applicant shall be given a certificate, without additional cost, to the effect that the applicant is in good standing as a funeral director, and shall be entitled to a renewal license at any time during that license period, when located at a recognized funeral establishment, without payment of any additional renewal fee. The applicant must also furnish proof of completion of at least 15 hours of continuing education during the previous 2-year licensure period, except that new licensees are exempt from this requirement during the time between initial licensure and commencement of a full 2-year licensure period.

History: 1975 c. 39 s. 732 (2); 1975 c. 199; 1977 c. 29; 1979 c. 175 s. 29; 1979 c. 221 6.662; Stats. 1979 s. 445.06; 1983 a. 485; 1985 a 29; 1991 a. 39.

445.08 Reciprocity in issuance of licenses. (1) Any person holding a valid license as a funeral director or embalmer in another state having requirements substantially equal to those in this state for a funeral director's license may apply for a license to practice in this state by filing with the examining board a certified statement from an authorized official of the state in which the applicant holds a license, showing the qualifications upon which said license was granted. Thereupon the examining board may,

upon the payment of the required fee, issue a funeral director's license.

(4) Applications for the examination at a time and place to be arranged and conducted by the examining board for a reciprocal funeral director's license shall be in writing and verified on a blank to be furnished by the examining board, and be accompanied by such proof of compliance with the requirements for a reciprocal funeral director's license and with such other information as the examining board requires and shall be accompanied by the examination fee for each application.

History: 1971 c. 213 s. 5; 1971 c. 301; 1975 c. 39 ss. 656, 657, 732 (2); 1975 c. 199; 1977 c. 29; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.08; 1981 c. 380; 1981 c. 391 s. 211; 1983 a 485; 1997 a 27.

445.09 Display of licenses. Funeral director's licenses and certificates of apprenticeship shall be displayed conspicuously in the place of business conducted by the licensee or where the licensee or apprentice is employed.

History: 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.09; 1983 a 485.

445.095 Apprenticeship, funeral directors: (1) (a) A person desiring to become an apprentice as a funeral director shall apply on a form provided for the purpose and appear before the examining board, or any duly appointed representative of the examining board. The application shall state that the applicant is 18 years of age or older, holds a high school diploma or possesses equivalent education as defined by the examining board, does not have an arrest or conviction record, subject to ss. 111.321; 111.322 and 111.335, and has completed one academic year of instruction in a recognized college or university in a course of study approved by the examining board or has equivalent education. The application must be substantiated by the oath of the applicant and be accompanied by the fee specified in s. 440.05 (6). When the examining board is satisfied as to the qualification of an applicant for apprenticeship, it shall issue a certificate of apprenticeship. When the apprentice enters the employment of a licensed funeral director, the apprentice shall immediately notify the examining board; giving the name and place of business of the funeral director whose service the apprentice has entered. If, at any time thereafter, the apprentice leaves the employ of the licensed funeral director whose service the apprentice has entered, the licensed funeral director shall give the apprentice an affidavit showing the length of time served as an apprentice with that employer, and the work done in detail, which affidavit shall be filed with the examining board and made a matter of record in that office. If the apprentice thereafter enters the employ of another licensed funeral director in this state, the applicant shall forthwith report such employment to the examining board.

(b) All apprentices under this chapter shall be paid at least the minimum wage in effect in this state.

(c) A certificate of apprenticeship issued under this section shall be renewable annually upon the payment on January 1 of each year of the renewal fee specified in s. 440.08 (2) (b).

(d) All apprentices registered under this section shall report at least semiannually to the examining board upon forms provided by the examining board. The reports shall contain the information required by the examining board. Failure to submit the required reports shall constitute justification for termination of the apprenticeship.

(e) The semiannual report must show the number of hours served by the apprentice and the number of bodies the apprentice has assisted in embalming, or otherwise prepared for burial or disposition during such period, the number of funeral services at which the apprentice has assisted, and give such other information as may be required by the examining board. The data contained in the report shall be certified to as correct by the licensed funeral director under whom the apprentice has served during such period.

(2) (b) The term of a registered apprentice shall be recognized only when given employment in a funeral establishment under the personal supervision of a licensed funeral director.

(b) A licensed funeral director, agent of a licensed funeral director, operator of a funeral establishment or agent of an operator of a funeral establishment may solicit the sale of a burial agreement under s. 445.125 (3m) by contacting any person if any of the following applies:

1. The prospective purchaser requests the contact.
2. The contact is part of a mass-mailing, television, radio; print or other type of advertising campaign that is not directed solely toward persons in a hospital, health care facility or similar facility or institution or toward the relatives of a person whose death is imminent or appears to be imminent.

(c) Paragraph (a) 3. does not prohibit a licensed funeral director, agent of a licensed funeral director, operator of a funeral establishment or agent of an operator of a funeral establishment from using mass-marketing practices or in-person contacts or communications permitted under this section or by a rule promulgated by the examining board under s. 445.125 (3m) (j) 2.

(3r) No licensed funeral director or operator of a funeral establishment may do any of the following:

(a) Require a person who enters into a burial agreement under s. 445.125 (3m) to purchase a life insurance policy used to fund the agreement from an insurance intermediary licensed under ch. 628 who is specified by the funeral director or operator of the funeral establishment.

(b) Authorize an insurance intermediary licensed under ch. 628 to sell or solicit the sale of a burial agreement under s. 445.125 (3m) (b) 2. a. unless the insurance intermediary meets the training requirements established by the examining board by rule under s. 445.125 (3m) (j) 1. a.

(4) No licensed funeral director or operator of a funeral establishment may publish, or cause to be published, any false, misleading or fraudulent advertisement, or take undue advantage of patrons or commit any fraudulent act in the conduct of business, or do any other act not in accord with the rules established by the department of health and family services and the examining board and not in accord with proper business practice as applied to the business or profession of funeral directing and embalming.

(5) Any licensed funeral director who knowingly permits any person not licensed as a funeral director to embalm or prepare for burial any body under his or her jurisdiction, or who permits any person not licensed as a funeral director to hold or conduct any funeral service for which he or she is responsible, or who permits any person not licensed as a funeral director to remove any dead human body from any home, hospital or institution for preparation, or who permits any person under his or her supervision or associated with him or her to violate the provisions of this chapter, shall be guilty of violating the provisions of this chapter and subject to the penalties provided therein. The foregoing provisions shall not be construed as to restrict the activities of a duly registered apprentice operating under the supervision of a licensed funeral director.

(6) No licensed funeral director or operator of a funeral establishment may operate a mortuary or funeral establishment that is located in a cemetery or that is financially, through an ownership or operation interest or otherwise, connected with a 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 owner, employe or agent thereof in connection with the sale or transfer of any cemetery lot, outer burial container, burial privilege or cremation, nor act, directly or indirectly, as a broker or jobber of any cemetery property or interest therein.

(7) No licensed funeral director or operator of a funeral establishment may sell or cause to be sold any shares of stocks, certificates of membership or any other form of certificate which provides for any burial benefit or any rebate at the time of death to the holders thereof. This subsection does not prohibit the sale of

burial agreements to the extent permitted under, and that are in conformity with, s. 445.125 (3m).

History: 1973 C. 272; 1975 C. 39, 199; 1979 C. 175 s. 29; 1979 C. 221 s. 662; Stats. 1979 s. 445.12; 1983 a. 485; 1989 a. 307; 1993 a. 100; 1995 a. 27 s. 9126 (19); 1995 a. 295.

Whether parent and subsidiary corporations violate (6), which prohibits an operator of funeral establishment from being connected with cemetery, depends upon facts relating to legal separateness of parent and subsidiary corporations. 78 Atty. Gen. 5.

445.125 Burial agreements. (1) BURIAL AGREEMENTS

FUNDED BY TRUSTS. (a) 1. Except as provided in sub. (3m), whenever a person, referred to in this subsection as the depositor, makes an agreement with another person selling or offering for sale funeral or burial merchandise or services, referred to in this subsection as the beneficiary, for the purchase of a casket, outer burial container not preplaced into the burial excavation of a grave, combination casket-outer burial container or other receptacle not described in sub. (4) (b) for the 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 subsection 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.

2. Notwithstanding s. 701.12 (1), such agreements may be made irrevocable as to the first \$2,000 of the funds paid under the agreement by each depositor.

3. Any interest or dividends accruing to a trust fund under subd. 2. may be made irrevocable.

4. Any depositor who made an irrevocable agreement under subd. 2. may designate a different beneficiary at any time prior to death, after written notice to the current beneficiary.

(b) All trust funds under par. (a) shall be deposited with a bank or trust company within the state whose deposits are insured by the federal deposit insurance corporation, deposited in a savings and loan association or savings bank within the state whose deposits are insured by the federal deposit insurance corporation or invested in a credit union within the state whose savings are insured by the national board, as defined in s. 186.01 (3m), or by the Wisconsin credit union savings insurance corporation and shall be held in a separate account in the name of the depositor, in trust for the beneficiary until the trust fund is released under either of the conditions provided in par. (a) 1. In the event of the death of the depositor before the death of the potential decedent, title to such funds shall vest in the potential decedent, and the funds shall be used for the personal property and services to be furnished under the contract for the funeral of the potential decedent. The depositor shall be furnished with a copy of the receipts, certificates or other appropriate documentary evidence showing that the funds have been deposited or invested in accordance with this subsection. The depositor or the beneficiary shall furnish the bank, trust company, savings bank, savings and loan association or credit union with a copy of the contract. Upon receipt of a certified copy of the certificate of death of the potential decedent, together with the written statement of the beneficiary that the agreement was complied with, the bank, trust company, savings bank, savings and loan association or credit union shall release such trust funds to the beneficiary.

(c) The payment pursuant to this subsection of such fund and any interest or dividends which may have accumulated shall relieve the bank, trust company, savings bank, savings and loan association or credit union of any further liability for such funds, interest or dividends. A bank need not comply with ch. 223 to accept and disburse deposits under this subsection.

(3m) BURIAL AGREEMENTS FUNDED WITH PROCEEDS OF LIFE INSURANCE POLICIES. (a) In this subsection:

of the fee specified in s. 440.05 (1). The cemetery authority shall certify in writing to the department that the individual is competent to act as a cemetery salesperson. Within 10 days after the certification of any cemetery salesperson, the cemetery salesperson shall verify and furnish to the department, in such form as the department prescribes, all of the following information:

- (a) Name and address.
- (b) Educational qualifications.
- (c) Prior occupations.
- (d) Any other information which the department may reasonably require to enable it to determine the competency of the salesperson to transact the business of a cemetery salesperson in a manner which safeguards the interest of the public.

(3) Any cemetery salesperson may transfer to the employment of a cemetery authority, other than the cemetery authority that certified the salesperson under sub. (2), by filing a transfer form with the department and paying the transfer fee specified in s. 440.05 (7).

(4) Renewal applications shall be submitted to the department on a form provided by the department on or before the applicable renewal date specified under s. 440.08 (2) (a) and shall include the applicable renewal fee specified under s. 440.08 (2) (a).

(5) Every cemetery 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.

(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 registered under sub. (1).

(7) An individual who solicits the sale of cemetery lots or mausoleum spaces in 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 registered under sub. (2).

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

(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.

History: 1989 a 307 ss. 75, 80 to 83.91; 1991 a. 39.269.

440.92 Cemetery preneed sellers. (1) REGISTRATION. (a) Except as provided in subs. (4), (9) (a) and (10), 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 s. 440.05 (1).
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) Renewal applications shall be submitted to the department on a form provided by the department on or before the applicable renewal date specified under s. 440.08 (2) (a) and shall include the applicable renewal fee specified under s. 440.08 (2) (a).

(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. B) 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 commerce 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 COMMERCE FOR APPROVAL. THE SELLER IS RESPONSIBLE FOR ALL COSTS REQUIRED TO OBTAIN APPROVAL OF THE PLANS BY THE DEPARTMENT OF COMMERCE, COMPLETE THE CONSTRUCTION, AND OBTAIN CERTIFICATION OF THE CONSTRUCTION BY THE DEPARTMENT OF COMMERCE."

(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 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 November 1, 1991. 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) 1. 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.

(6) **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. 180.1622 or 181.1622, 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 (1) 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). This paragraph does not apply to any information regarding the name, address or employer of or financial information related to an individual that is requested under s. 49.22 (2m) by the department of workforce development or a county child support agency under s. 59.53 (5).

(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 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 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).

(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, 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.

(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.

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

History: 1989 a. 307; 1991 a. 16, 32, 39, 269; 1993 a. 16; 1995a. Uss. 6605.9116 (5); 1995 a. 295; 1997 a. 79, 191.

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, limited liability company or corporation, any, **officer**, director, trustee, **member** 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. This subsection does not apply to a limitation or suspension under s. 440.13 (2) (a).

History: 1989 a. 307; 1993 a. 112; 1997 a. 191.

440.945 Cemetery monuments. (1) DEFINITIONS. In this section:

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

(b) "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.

(c) "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 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.

(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 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

agreement. creating the cosigner's liability for future charges is executed:

NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

§ 444.4 Late charges.

(a) In connection with collecting a debt arising out of an extension of credit to a consumer in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, it is an unfair act or practice within the meaning of section 5 of that Act for a creditor directly or indirectly, to levy or collect any delinquency charge on a payment, which payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) or delinquency charge(s) assessed on earlier installment(s).

(b) For purposes of this section, collecting a debt means any activity other than the use of judicial process that is intended to bring about or does bring about repayment of all or part of a consumer debt.

9444.5 State exemptions.

(a) If, upon application to the Federal Trade Commission by an appropriate State agency, the Federal Trade Commission determines that:

(1) There is a State requirement or prohibition in effect that applies to any transaction to which a provision of this rule applies; and

(2) The State requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by this rule;

Then that provision of the rule will not be in effect in that State to the extent specified by the Federal Trade Commission in its determination, for as long as the State administers and enforces the State requirement or prohibition effectively.

(b) [Reserved]

PART 453—FUNERAL INDUSTRY PRACTICES

Sec.

- 453.1 Definitions.
- 453.2 price disclosures.
- 453.3 Misrepresentations.
- 453.4 Required purchase of funeral goods and funeral services.
- 453.5 Services provided without prior approval.
- 453.6 Retention Of documents.
- 453.7 Coinprehension of disclosures.
- 453.8 Declaration of intent.
- 453.9 State exemptions.

AUTHORITY: 15 U.S.C. 57a(a); 15 U.S.C. 487a; 15 U.S.C. 552.

SOURCE: 59 FR 1611, Jan. 11, 1994, unless otherwise noted.

§ 453.1 Definitions.

(a) Alternative container. An alternative container is an unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

(b) Cash advance item. A cash advance item is any item of service or merchandise described as a purchase as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to, cemetery or crematory services; casket bearers; public transportation; obsequies; honoraria; flowers; musicians or singers; nurses; obituary notices; gravestone and death certificates.

(c) Casket. A casket is a container which is usually constructed of metal, wood, glass, plastic, or other material, and is used for the temporary or permanent storage of human remains.

(d) Commissioner. Commissioner refers to the Federal Trade Commission.

(e) Cremation. Cremation is the process whereby human remains are reduced to cremated remains.

(f) Crematory. A crematory is a person, partnership, or corporation that performs cremation services.

(g) Direct cremation. Direct cremation is a disposition of human remains by cremation without a viewing, visitation, or other service to the body present.

(h) Funeral goods. Funeral goods are the goods which are sold or offered for sale directly or indirectly in connection with a funeral service.

(i) Funeral provider. A funeral provider is any person, partnership, or corporation that provides funeral services to the public.

(j) Funeral services. Funeral services are any services provided to the public, including but not limited to: (1) Care for human bodies for other final disposition; (2) arrange, supervise, or perform funeral ceremonies; (3) immediate burial; (4) viewing, visitation, or other service to the body present, etc.

(k) Memorial service. A memorial service is a ceremony held in the presence of the deceased.

(l) Funeral ceremony. A funeral ceremony is a ceremony held in the presence of the deceased.

(m) Outer burial container. An outer burial container is a container which is designed to enclose the body and is not limited to, but may include, caskets and grave liners.

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3—FUNERAL INDUSTRY
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flowers; musicians or sing-
obituary notices; gratifica-
ertificates.

(c) **Casket.** A "casket" is a rigid con-
tainer which is designed for the encase-
ment of human remains and which is
usually constructed of wood, metal, fi-
berglass, plastic, or like material, and
ornamented and lined with fabric.

(d) **Commission.** "Commission" refers
to the Federal Trade Commission.

(e) **Cremation.** "Cremation" is a heat-
ing process which incinerates human
remains.

(f) **Crematory.** A "crematory" is any
person, partnership or corporation that
performs cremation, and sells funeral
goods.

(g) **Direct cremation.** A "direct crema-
tion" is a disposition of human re-
mains: by cremation, without formal
viewing, visitation, or ceremony with
the body present.

(h) **Funeral goods.** "Funeral goods"
are the goods which are sold or offered
for sale directly to the public for use in
connection with funeral services.

(i) **Funeral provider.** A "funeral pro-
vider" is any person, partnership or
corporation that sells or offers to sell
funeral goods and funeral services to
the public.

(j) **Funeral services.** "Funeral serv-
ices" are any services which may be
used to:

(1) Care for and prepare deceased
human bodies for burial, cremation or
other final disposition; and

(2) arrange, supervise or conduct the
funeral ceremony or the final disposi-
tion of deceased human bodies.

(k) **Immediate burial.** An "immediate
burial" is a disposition of human re-
mains by burial, without formal view-
ing, visitation, or ceremony with the
body present, except for a graveside
service.

(l) **Memorial service.** A "memorial
service" is a ceremony commemorat-
ing the deceased without the body
present.

(m) **Funeral ceremony.** A "funeral
ceremony" is a service commemorat-
ing the deceased with the body present.

(n) **Outer burial container.** An "outer
burial container" is any container
which is designed for placement in the
grave around the casket including, but
not limited to, containers commonly
known as burial vaults, grave boxes,
and grave liners.

(o) **Person.** A "person" is any individ-
ual, partnership, corporation, associa-
tion, government or governmental sub-
division or agency, or other entity.

(p) **Services of funeral director and
staff.** The "services of funeral director
and staff" are the basic services, not to
be included in prices of other cate-
gories in § 453.2(b)(4), that are fur-
nished by a funeral provider in arrang-
ing any funeral, such as conducting the
arrangements conference, planning the
funeral, obtaining necessary permits,
and placing obituary notices.

§ 453.2 Price disclosures.

(a) **Unfair or deceptive acts or practices.**
In selling or offering to sell funeral
goods or funeral services to the public,
it is an unfair or deceptive act or prac-
tice for a funeral provider to fail to fur-
nish accurate price information dis-
closing the cost to the purchaser for
each of the specific funeral goods and
funeral services used in connection
with the disposition of deceased human
bodies; including at least the price of
embalming, transportation of remains,
use of facilities, caskets, outer burial
containers, . . . immediate burials, or di-
rect cremations, to persons inquiring
about the purchase of funerals. Any fu-
neral provider who complies with the
preventive requirements in paragraph
(b) of this section is not engaged in the
unfair or deceptive acts or practices
defined here.

(b) **Preventive requirements.** To prevent
these unfair or deceptive acts or prac-
tices, as well as the unfair or deceptive
acts or practices defined in § 453.4(b)(1),
funeral providers must:

(1) **Telephone price disclosure.** Tell per-
sons who ask by telephone about the
funeral provider's offerings or prices
any accurate information from the
price lists described in paragraphs
(b)(2) through (4) of this section and
any other readily available informa-
tion that reasonably answers the ques-
tion.

(2) **Casket price list.** (1) Give a printed
or typewritten price list to people who
inquire in person about the offerings or
prices of caskets or alternative con-
tainers. The funeral provider must
offer the list upon beginning discussion
of, but in any event before showing cas-
kets. The list must contain at least the

retail prices of all caskets and alternative containers offered which, do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) *Outer burial container price list.* (i) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."

(4) *General price list.* (i)(A) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral pro-

vider. The funeral provider must give the list upon beginning discussion of any of the following:

- (1) The prices of funeral goods or funeral services;
- (2) The overall type of funeral service or disposition; or
- (3) Specific funeral goods or funeral services offered by the funeral provider.

(B) The requirement in paragraph (b)(4)(i)(A) of this section applies whether the discussion takes place in the funeral home or elsewhere. Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to embalm, required by § 453.5(a)(2), does not, by itself, trigger the requirement to offer the general price list if the provider, in seeking prior embalming approval, discloses that embalming is not required by law, except in certain special cases, if any. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement under paragraph (b)(4)(i)(A) of this section to give consumers a general price list.

(C) The list required in paragraph (b)(4)(i)(A) of this section must contain at least the following information:

(1) The name, address, and telephone number of the funeral provider's place of business;

(2) A caption describing the list as a "general price list"; and

(3) The effective date for the price list;

(ii) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

(A) Forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;

(B) Receiving remains from another funeral home, together with a list of the services provided for any quoted price;

(C) The price range for the direct cremations offered by the funeral provider, together with:

(1) A separate price range for the price of the container;

(2) Separate price range for cremation offered in alternative container; and

(3) A description of the container (where applicable) in each price;

(D) The price range for direct burials offered in alternative container, together with:

(1) A separate price range for a burial where the price is for the casket;

(2) Separate price range for a direct burial offered in alternative container;

(3) A description of the container (where applicable) in that price;

(E) Transfer of remains to another home;

(F) Embalming;

(G) Other preparatory services;

(H) Use of facilities for viewing;

(I) Use of facilities for a funeral ceremony;

(J) Use of facilities for a memorial service;

(K) Use of equipment for a graveside service;

(L) Hearse; and

(M) Limousine.

(iii) Include on the price list, together with the following information:

(A) Either of the following price ranges:

(1) The price range for the funeral services, together with the statement: "The price for the funeral services will be provided home."; or

(2) The prices of individual funeral services disclosed in the material specified in paragraph (b)(2)(i) of this section;

(B) Either of the following price ranges:

(1) The price range for the funeral services, together with the statement: "A complete price list will be provided home."; or

(2) The prices of individual funeral services, together with the statement: "A complete price list will be provided home.";

(2) The prices of individual funeral services, together with the statement: "A complete price list will be provided home.";

(3) The price range for the funeral services, together with the statement: "A complete price list will be provided home.";

(4) The price range for the funeral services, together with the statement: "A complete price list will be provided home.";

(5) The price range for the funeral services, together with the statement: "A complete price list will be provided home.";

funeral provider must give upon beginning discussion the following:

- (1) Prices of funeral goods or services;
- (2) Overall type of funeral service; and
- (3) Prices of funeral goods or funeral services offered by the funeral provider.

Requirement in paragraph (b)(1) of this section applies when the discussion takes place at home or elsewhere. However, that when the deceased is transported to the funeral home, an in-person request for authorization to embalm by § 453.5(a)(2), does not trigger the requirement to offer a price list if the provider in prior embalming approval that embalming is not required except in certain special cases. Any other discussion during which about prices or the selection of goods or services triggers the requirement under paragraph (b)(1) of this section to give a general price list.

Price list required in paragraph (b)(1) of this section must contain the following information: (1) Name, address, and telephone of the funeral provider's place of business; (2) Description of the price list as a "general price list"; and (3) Effective date for the price list.

Information on the price list, in any form, shall include retail prices (expressed as a flat fee, or as the price per casket or other unit of computation) and other information specifically for at least each of the following services, if offered for sale:

- (1) Direct cremation of remains from another home, together with a list of prices provided for any quoted services;
- (2) Direct cremation of remains from another home, together with a list of prices provided for any quoted services;
- (3) Price range for the direct cremation offered by the funeral provider together with:

(1) A separate price for a direct cremation where the purchaser provides the container;

(2) Separate prices for each direct cremation offered including an alternative container; and

(3) A description of the services and container (where applicable), included in each price;

(D) The price range for the immediate burials offered by the funeral provider, together with:

(1) A separate price for an immediate burial where the purchaser provides the casket;

(2) Separate prices for each immediate burial offered including a casket or alternative container; and

(3) A description of the services and container (where applicable) included in that price;

(E) Transfer of remains to funeral home;

(F) Embalming;

(G) Other preparation of the body;

(H) Use of facilities and staff for viewing;

(I) Use of facilities and staff for funeral ceremony;

(J) Use of facilities and staff for memorial service;

(K) Use of equipment and staff for graveside service;

(L) Hearse; and

(M) Limousine.

(iii) Include on the price list, in any order, the following information:

(A) Either of the following:

(1) The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual caskets, disclosed in the manner specified by Paragraph (b)(2)(i) of this section; and

(B) Either of the following:

(1) The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (b)(3)(i) of this section; and

(C) Either of the following:

(1) The price for the basic services of funeral director and staff, together

with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)". If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider-overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services"; or

(2) The following statement: "Please note that a fee of (specify dollar amount) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (specify)." The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services." The statement must be placed on the general price list together with the casket price range, required by paragraph (b)(4)(iii)(A)(1) of this section, or together with the prices of individual caskets, required by (b)(4)(iii)(A)(2) of this section.

(iv) The services fee permitted by § 453.2(b)(4)(iii)(C)(1) or (C)(2) is the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.

(5) Statement of funeral goods and services selected. (i) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

(A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;

(B) Specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable,

a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); and

(C) The total cost of the goods and services selected.

(ii) The information required by this paragraph (b)(5) may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(6) *Other pricing methods.* Funeral providers may give persons any other price information, in any other format, in addition to that required by § 453.2(b)(2), (3), and (4) so long as the statement required by § 453.2(b)(5) is given when required by the rule.

§ 453.3 Misrepresentations.

(a) *Embalming provisions.* (1) Deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires that a deceased person be embalmed when such is not the case;

(ii) Fail to disclose that embalming is not required by law except in certain special cases, if any.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §§ 453.4(b)(1) and 453.5(2), funeral providers must:

(i) Not represent that a deceased person is required to be embalmed for:

- (A) Direct cremation;
- (B) Immediate burial; or

(C) A closed casket funeral without viewing or visitation when refrigeration is available and when state or local law does not require embalming; and

(ii) Place the following disclosure on the general price list, required by § 453.2(b)(4), in immediate conjunction with the price shown for embalming: "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or

immediate burial." The phrase "except in certain special cases" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.

(b) *Casket for cremation provisions.* (1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires a casket for direct cremations.

(ii) Represent that a casket is required for direct cremations.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(a)(1), funeral providers must place the following disclosure in immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (specify containers)." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) *Outer burial container provisions.* (1) *Deceptive acts or practices.* In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;

(ii) Fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(2) *Preventive requirement.* To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by § 453.2(b)(3)(i), or, if the prices of outer burial containers are listed on the general price list, required by § 453.2(b)(4), in immediate conjunction with the prices: "In most areas of the country, state or local law does not require

you 'buy a container' for a casket in the ground. Cemeteries require a container so that the casket will not sink in. Either a casket or a vault will satisfy the requirements. The phrase 'in many areas' need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require a casket or vault. (d) General, preventive requirements. In selling funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) Represent that state or local law requires a casket for direct cremations when such is not the case; (2) Represent that a casket is required for direct cremations when such is not the case; (3) Represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case; (4) Fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

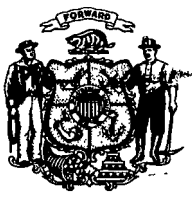
(5) Represent that a deceased person is required to be embalmed when such is not the case; (6) Fail to disclose that embalming is not required by law except in certain special cases, if any.

(7) Represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case; (8) Fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(9) Represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case; (10) Fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(11) Represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case; (12) Fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(13) Represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case; (14) Fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.



TODAY - ~~10:30~~
10:30

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Ø-NOTE

gen cat

1 **AN ACT** ...; **relating to:** creating a cemetery management reserve fund,
 2 regulation of cemetery authorities, salespersons and preneed sellers,
 3 appointment of trustees for certain cemeteries and mausoleums, identification
 4 of human remains, granting rule-making authority, making an appropriation
 5 and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version of this draft.

For further information **see** the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

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

6 **SECTION 1.** 20.165 (1) (q) of the statutes is created to read:
 7 20.165 (1) (q) ***Cemetery and mausoleum trustee disbursements.*** From the
 8 cemetery management reserve fund, a sum sufficient to make disbursements to
 9 trustees under the rules promulgated under s. 157.117 (4) (a).

1 SECTION 2. 25.17 (1) (at) of the statutes is created to read:

2 25.17 (1) (at) Cemetery management reserve ~~fund~~ fund (s. 25.85);

3 SECTION 3. 25.85 of the statutes is created to read:

4 **25.85 Cemetery management reserve fund.** There is established a
5 separate nonlapsible trust fund designated as the cemetery management reserve
6 fund, to consist of each of the following:

7 (1) The moneys received from death certificate filing fees under s. 69.22 (1) (d).

8 (2) The moneys received from the issuance of copies of death certificates under
9 s. 69.22 (1) (e).

10 (3) The moneys received from surcharges on the sale of cemetery lots and
11 mausoleum spaces under s. 157.105.

12 SECTION 4. 69.18 (1) (bm) (intro.) of the statutes is amended to read:

13 69.18 (1) (bm) (intro.) A person required to file a certificate of death under par.
14 (b) shall obtain the information required for the certificate of death from the next of
15 kin or the best qualified person or source available. The person filing the certificate
16 of death shall enter his or her signature on the certificate and include his or her
17 address and the date of signing and shall present or mail the certificate, within 24
18 hours after being notified of the death, to the physician, coroner or medical examiner
19 responsible for completing and signing the medical certification under sub. (2).
20 Within 2 days after receipt of the medical certification under sub. (2), the person
21 filing the certificate of death shall mail or present the certificate of death, together
22 with the fee required under s. 69.22 (1) (d), in:

History: 1985 a. 315; 1985 a. 332 s. 253; 1989 a. 307; 1993 a. 386; 1995 a. 357; 1997 a. 114.

23 SECTION 5. 69.22 (1) (a) of the statutes is amended to read:

1 69.22 (1) (a) Except as provided under ~~par. (e)~~ pars. (c) and (e), \$7 for issuing
 2 one certified copy of a vital record and \$2 for any additional certified copy of the same
 3 vital record issued at the same time.

History: 1985 a. 315, 1985 a. 332 s. 253; 1987 a. 27; 1991 a. 39; 1993 a. 16,27; 1995 a. 27; 1997 a. 191,210.

4 **SECTION 6.** 69.22 (1) (d) and (e) of the statutes are created to read:

5 69.22 (1) (d) Ten dollars for receiving a death certificate filed by a person
 6 required to file a certificate of death under s. 69.18 (1) (b), which shall be forwarded
 7 to the state treasurer under sub. (1r).

8 (e) Eight dollars for issuing a copy of a death certificate, \$1 of which shall be
 9 forwarded to the state treasurer under sub. (1r).

10 **SECTION 7.** 69.22 (1r) of the statutes is created to read:

11 69.22 (1r) By the 15th day of the first month following the end of a calendar
 12 quarter, the state registrar and any person acting under this subchapter shall
 13 forward to the state treasurer the amounts specified in sub. (1) (d) and (e) that are
 14 received during the calendar quarter. The state treasurer shall credit all amounts
 15 received under this subsection to the cemetery management reserve fund.

16 **SECTION 8.** 157.062 (9) of the statutes is amended to read:

17 157.062 (9) **EXEMPTIONS FOR CERTAIN NONPROFIT CEMETERIES.** In lieu of
 18 delivering a certification, resolution or copy of proceedings to the department of
 19 financial institutions under sub. (1), (2) or (6) (b), a cemetery association ~~that is not~~
 20 ~~required to be registered under s. 440.91 (1)~~ and that is not organized or conducted
 21 for pecuniary profit shall deliver the certification, resolution or copy of proceedings
 22 to the office of the register of deeds of the county in which the cemetery is located.

History: 1977 c. 449 ss. 233,497; 1983 a. 192; 1985 a. 316 s. 18; Stats. 1985 s 157 062; 1989 a. 31, 307; 1991 a 269; 1995 a. 27; 1997 a. 254.

23 **SECTION 9.** 157.065 (1) (b) 8. of the statutes is created to read:

24 157.065 (1) (b) 8. A trustee appointed under s. 157.117 (2) (b).



1 SECTION 10. 157.08 (5) of the statutes is amended to read:

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

History: 1977 c. 449 s. 497; 1989 a. 307; 1991 a. 269.

6 SECTION 11. 157.10 of the statutes is amended to read:

7 **157.10 Alienation and use of cemetery lots.** While any person is buried in
8 a cemetery lot, the cemetery lot shall be inalienable, without the consent of the
9 cemetery authority, and on the death of the owner, ownership of the cemetery lot
10 shall descend to the owner's heirs; but any one or more of such heirs may convey to
11 any other heir his or her interest in the cemetery lot. No human remains may be
12 buried in a cemetery lot except the human remains of one having an interest in the
13 cemetery lot, or a relative, or the husband or wife of such person, or his or her relative,
14 except by the consent of all persons having an interest in the cemetery lot. A
15 cemetery authority may not prohibit the burial in a cemetery lot of a relative of a
16 person with an interest in the cemetery lot, husband or wife of such a person, or
17 relative of a husband or wife of such a person.

History: 1989 a 307.

18 SECTION 12. 157.105 of the statutes is created to read:

19 **157.105 Surcharge on cemetery lot and mausoleum space sales.** A
20 cemetery authority that sells a cemetery lot or a person operating a mausoleum that
21 sells a mausoleum space shall assess a surcharge of \$10 on each cemetery lot or
22 mausoleum space sold by the seller. By the 15th day of the first month following the
23 end of a calendar quarter, a cemetery authority or person operating a mausoleum
24 shall forward to the state treasurer the surcharges assessed under this section

1 during the calendar quarter. The state treasurer shall credit all amounts received
2 under this section to the cemetery management reserve fund.

3 **SECTION 13. 157.11 (11)** of the statutes is amended to read:

4 **157.11 (11) EXEMPTION FOR CERTAIN NONPROFIT CEMETERIES.** Subsection (9g) does
5 not apply to a cemetery authority ~~that is not required to be registered under s. 440.91~~
6 ~~(1) and~~ that is not organized or conducted for pecuniary profit.

7 History: 1971 c. 41 s. 12; 1977 c. 449 ss. 234,497; 1979 c. 32 s. 92, 16, 1979 c 110 s. 60 (13); 1985 a. 200; 1985 a. 316 s. 25; 1987 a. 190; 1989 a. 307; 1991 a. 269.

8 **SECTION 14. 157.115 (1) (b) 1.** of the statutes is renumbered 157.115 (1) (b).

9 **SECTION 15. 157.115 (1) (b) 2.** of the statutes is repealed.

10 **SECTION 16. 157.115 (1) (c)** of the statutes is repealed.

11 **SECTION 17. 157.115 (2) (b)** of the statutes is amended to read:

12 157.115 (2) (b) No cemetery authority may resell an abandoned cemetery lot
13 unless the cemetery authority complies with the requirements in this subsection or
the cemetery lot is sold by a trustee under s. 157.117.

14 History: 1989 a. 307 ss. 18m, 20, 28, 45.

15 **SECTION 18. 157.117** of the statutes is created to read:

16 **157.117 Trustees for certain cemeteries and mausoleums. (1)**

17 **DEFINITIONS.** In this section:

18 (a) "Cemetery" does not include a cemetery the ownership, control or
19 management of which has been assumed by a municipality under **s. 157.115 (1) (b)**
or (c), 1997 stats., or a predecessor statute.

20 (b) "Local governmental unit" means a municipality or county.

21 (c) "Municipality" means a city, village or town.

22 (d) "Trustee" means a trustee appointed under sub. (2) (b).

23 (2) **APPOINTMENT OF TRUSTEE.** (a) The attorney general, a local governmental
24 unit, or 6 or more residents of a municipality in which a cemetery or mausoleum is

1 located may petition the circuit court for the county in which the cemetery or
2 mausoleum is located for the appointment of a trustee for the cemetery or
3 mausoleum. A petitioner under this subsection shall serve a copy of the petition on
4 the attorney general and the department.

5 (b) A court shall schedule a hearing on a petition filed under par. (a) within 90
6 days after the petition is filed with the court. If the court finds after a hearing that
7 a cemetery or mausoleum is neglected, abandoned, in disuse, improperly maintained
8 or financially unsound, the court shall appoint as a trustee for the cemetery or
9 mausoleum the department or another capable and competent person to serve as
10 trustee of the cemetery or mausoleum under this section.

11 (c) An owner of a cemetery or mausoleum may petition the court in a proceeding
12 under par. (b) for an order surrendering title to the cemetery or mausoleum if the
13 owner believes itself to be incapable of continuing to operate the cemetery or
14 mausoleum. The court may grant the petition if it finds that the cemetery or
15 mausoleum is neglected, abandoned, in disuse, improperly maintained or financially
16 unsound. If the court grants the petition, it shall transfer title to the cemetery or
17 mausoleum to the state and appoint a trustee under par. (b).

18 (d) All disputes relating to the appointment of a trustee or the actions of a
19 trustee appointed under this section shall be resolved by the court that appointed the
20 trustee.

21 (3) **TRUSTEE POWERS AND DUTIES.** (a) A trustee shall do each of the following:

22 1. Be responsible for the management, maintenance and operation for each
23 cemetery or mausoleum under trusteeship.

1 2. Comply with the record-keeping, audit and reporting requirements of s.
2 157.62 (2). A trustee shall provide the court with a copy of all records, audits and
3 reports filed under this subdivision.

4 3. Provide the court with any additional information, records or reports that
5 the court may direct.

6 (b) A trustee may petition the court that appointed the trustee for any of the
7 following:

8 1. Transfer of ownership of a cemetery or mausoleum and all tangible and
9 intangible real and personal property to the state under the management of the
10 trustee.

11 2. Termination of the trusteeship and reversion of ownership and operation of
12 a cemetery or mausoleum to the previous owner.

13 3. Termination of the trusteeship and transfer of ownership and operation of
14 a cemetery or mausoleum to the state or a new owner.

15 4. Removal and reinternment of human remains in accordance with the
16 requirements of this subchapter.

17 5. Termination of the trusteeship and closure of a cemetery or mausoleum after
18 removal and reinter&&t of human remains under subd. 4.

19 (c) A trustee may do any of the following:

20 1. Seek a new owner or operator of a cemetery or mausoleum, including actively
21 marketing the cemetery or mausoleum and taking any other action necessary or
22 useful to effect the sale of the cemetery or mausoleum.

23 2. Assess cemetery lots for cleaning, care or improvement under s. 157.11 (7).

24 3. Expend funds disbursed from the cemetery management reserve fund for the
25 purpose of exercising its powers or carrying out its duties under this section.

1 4. Employ professional, legal and technical experts, any such other managers,
 2 management personnel, agents and employees as may be required to exercise its
 3 powers or carry out its duties under this section.

4 5. Take any other action necessary or useful to the management or trusteeship
 5 of a cemetery or mausoleum.

6 (4) DEPARTMENT POWERS AND DUTIES. (a) The department shall promulgate rules
 7 establishing requirements and procedures to make disbursements from the
 8 appropriation under s. 20.165 (1) (q) to trustees.

9 (b) If appointed as a trustee under sub. (2) (b), the department shall have all
 10 the powers and duties specified in sub. (3).

11 (c) The department may promulgate rules to carry out the purposes of this
 12 section.

13 (5) TERMINATION OF TRUSTEESHIP. A court that appointed a trustee shall
 14 terminate the trusteeship if any of the following applies

15 (a) The owner or operator of a cemetery or mausoleum demonstrates to the
 16 satisfaction of the court that the conditions that necessitated the trusteeship have
 17 been remedied and that it is competent and capable of managing the cemetery or
 18 mausoleum.

19 (b) The court finds that a new operator is competent and capable of managing
 20 the cemetery or mausoleum. Upon making a finding under this paragraph, the court
 21 shall approve the transfer of the management of the cemetery or mausoleum to the
 22 new operator.

23 (c) The court approves the sale or transfer of a cemetery or mausoleum to the
 24 state, or to another public or private owner that the court finds is capable and
 25 competent to manage the cemetery or mausoleum on a financially sound basis.

1 (d) The court approves the closure of a cemetery or mausoleum after all human
2 remains have been removed and reinterred.

3 **SECTION 19.** 157.128 (3) (b) of the statutes is amended to read:

4 157.128 (3) (b) A cemetery consisting of less than 20 contiguous acres may be
5 dedicated by a cemetery authority ~~that is not required to be registered under s.~~
6 ~~440.91 (1) and~~ [✓] that is not organized or conducted for pecuniary profit.

7 History: 1989 a. 307; 1991 a. 269.

8 **SECTION 20.** 157.19 (5) (a) of the statutes is amended to read:

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

16 **SECTION 21.** 157.61 of the statutes is created to read:

17 **157.61 Identification of human remains. (1)** In this section, "identification
18 tag" means a tag that identifies a decedent. [✓]

19 (2) The department shall promulgate rules that require a funeral director who
20 prepares a dead human body for burial to attach an identification [✓] tag to the human
21 remains and to the exterior of a casket or burial vault that is used for burial of the
22 human remains. The rules shall also require a person who cremates human remains
23 to attach an identification [✓] tag to the interior and exterior of the cemetery
merchandise and mausoleum space that is used to contain the human remains.

1 (3) No cemetery authority may accept human remains for burial unless the
2 identification tags specified in sub. (2) have been attached to the casket and burial
3 vault, or cemetery merchandise and mausoleum space, that is used for burial of the
4 human remains.

5 SECTION 22. 157.62 (1) (a) (intro.) of the statutes is amended to read:

6 157.62 (1) (a) (intro.) Except as provided in par. (b) and s. 157.625, every
7 cemetery association shall file an annual report with the department of financial
8 institutions. The report shall be made on a calendar-year basis unless the
9 department of financial institutions, by rule, provides for other reporting periods.
10 The report is due on the 60th day after the last day of the reporting period. The
11 annual report shall include all of the following:

History: 1989 a. 307; 1991 a. 16, 32, 269; 1995 a. 27; 1997 a. 79

12 SECTION 23. 157.62 (2) (a) of the statutes is amended to read:

13 157.62 (2) (a) ~~Except as provided in ss. 157.625 and 157.63 (1), every~~ Every
14 cemetery authority shall file an annual report with the department. The report shall
15 be made on a form prescribed and furnished by the department. The report shall be
16 made on a calendar-year basis unless the department, by rule, provides for other
17 reporting periods. The report is due on the 60th day after the last day of the reporting
18 period.

History: 1989 a. 307; 1991 a. 16, 32, 269; 1995 a. 27; 1997 a. 79.

19 SECTION 24. 157.62 (2) (b) 8. of the statutes is created to read:

20 157.62 (2) (b) 8. Information that identifies the location of all human remains
21 that are buried at the cemetery operated by the cemetery authority. The department
22 shall promulgate rules that establish requirements for providing information under
23 this subdivision.

24 SECTION 25. 157.62 (6) of the statutes is amended to read:

INSERT 10 - 23

INSERT 11-13

1 157.62 (6) AUDIT. ~~Except as provided in ss. 157.625, 157.63 (5) and 440.92 (9)~~
2 (e), the ~~The~~ department ~~may~~ shall audit, at reasonable times and frequency, the
3 records, trust funds and accounts of any cemetery authority, including records, trust
4 funds and accounts pertaining to services provided by a cemetery authority which
5 are not otherwise subject to the requirements under this chapter. The department
6 ~~may~~ shall conduct audits under this subsection on a random basis, and shall conduct
7 all audits under this subsection without providing prior notice to the cemetery
8 authority.

History: 1989 a. 307; 1991 a. 16, 32, 269; 1995 a. 27, 1997 a. 79.

9 **SECTION 26.** 157.625 of the statutes is repealed.

10 **SECTION 27.** 157.63 of the statutes is repealed.

11 **SECTION 28.** 157.64 (2) (f) of the statutes is repealed.

History: 1989 a. 307; 1991 a. 74, 269; 1995 a. 336.

12 **SECTION 29.** 157.64 (2) (h) of the statutes is created to read:

13 157.64 (2) (h) Violates s. 157.112.

14 **A SECTION 30.** 440.03 (13) of the statutes is renumbered 440.03 (13) (a) and
15 amended to read:

16 440.03 (13) (a) ~~The~~ Except as provided in par. (b), the department may conduct
17 an investigation to determine whether an applicant for a credential issued under chs.
18 440 to 480 satisfies any of the eligibility requirements specified for the credential,
19 including whether the applicant does not have an arrest or conviction record.

20 (c) In conducting an investigation under ~~this subsection~~ par. (a) or (b), the
21 department may require an applicant to provide any information that is necessary
22 for the investigation or, for the purpose of obtaining information related to an arrest
23 or conviction record of an applicant, to complete forms provided by the department
24 of justice or the federal bureau of investigation. The department shall charge the

1 applicant any fees, costs or other expenses incurred in conducting the investigation
2 under ~~this subsection~~ par. (a) or (b).

History: 1977 c. 418 ss. 24,792; 1979 c. 34, 221, 337; 1981 c. 94, 1985 a. 29,340; 1989 a. 31, 340; 1991 a. 39; 1993 a. 16, 102, 107, 443, 445, 490, 491; 1995 a. 27 ss. 6472g, 6472j, 9126 (19); 1995 a. 233; 1997 a. 27, 75, 79; 1997 a. 191 ss. 312, 313, 318; 1997 a. 231,237; 1997 a. 261 ss. 1 to 4, 7, 10, 13; 1997 a. 311.

3 SECTION 31. 440.03 (13) (b) of the statutes is created to read:

4 440.03 (13) (b) Before granting a credential to a cemetery authority, cemetery
5 salesperson or preneed seller, or renewing such a credential, the department shall
6 conduct an investigation to determine whether a person specified ⁽⁵⁾ in 440.93 (1)
7 (intro.) has been convicted of an offense specified in s. 440.93 (1) (d).

8 SECTION 32. 440.91 (1) of the statutes is amended to read:

9 440.91 (1) ~~Except as provided in sub. (6m), every~~ Every cemetery authority that
10 ~~sells or solicits the sale of a total of 10 or more cemetery lots or mausoleum spaces~~
11 ~~during a calendar year and that pays any commission or other compensation to any~~
12 ~~person for selling or soliciting the sale of its cemetery lots or mausoleum spaces~~ shall
13 register with the department. The registration shall be in writing and shall include
14 the names of the officers of the cemetery authority.

History: 1989 a. 307 ss. 75, 80 to 83, 91; 1991 a. 39,269.

15 SECTION 33. 440.91 (2) (intro.) of the statutes is amended to read:

16 440.91 (2) (intro.) Except as provided in subs. ~~(7) and~~ sub. (10), every individual
17 who sells or solicits the sale of, or who expects to sell or solicit the sale of, a total of
18 10 or more cemetery lots or mausoleum spaces during a calendar year shall register
19 with the department. An individual may not be registered as a cemetery salesperson
20 except upon the written request of a cemetery authority and the payment of the fee
21 specified in s. 440.05 (1). The cemetery authority shall certify in writing to the
22 department that the individual is competent to act as a cemetery salesperson.
23 Within 10 days after the certification of any cemetery salesperson, the cemetery

INSERT 13-3

INSERT 13-9

1 salesperson shall verify and furnish to the department, in such form as the
2 department prescribes, all of the following information:

History: 1984a. 307 ss. 75, 80 to 83, 91; 1991 a. 39, '269.

3 SECTION 34. 440.91 (6m) and (7) of the statutes are repealed.

4 SECTION 35. 440.92 (9) of the statutes is repealed.

5 SECTION 36. 440.92 (10) of the statutes is amended to read:

6 440.92 (10) EXEMPTIONS; CERTAINNONPROFITCEMETERIES. This section does not
7 apply to a cemetery authority ~~that is not required to be registered under s. 440.91~~
8 (1) and that is not organized or conducted for pecuniary profit.

History: 1989 a. 307; 1991 a. 16, 32, 39, 269; 1993 a. 16; 1995 a. 27 ss. 6605.9116 (5); 1995 a. 295; 1997 a. 79, 191.

9 SECTION 37. 445.12 (1m) of the statutes is created to read:

10 445.12 (1m) No funeral director may prepare a dead human body for burial
11 unless the funeral director attaches identification tags as required under the rules
12 promulgated under s. 157.61 (2).

13 SECTION 38. Initial applicability.

14 (1) The treatment of sections 69.18 (1) (bm) (intro.) and 69.22 (1) (d) of the
15 statutes first applies to certificates filed on the effective date of this subsection.

16 (2) The treatment of section 69.22 (1) (a) and (e) of the statutes first applies to
17 certificates issued on the effective date of this subsection.

18 (3) The treatment of section 157.10 of the statutes first applies to burials on the
19 effective date of this subsection.

20 (4) The treatment of section 157.105 of the statutes first applies to sales
21 contracts entered into, modified or extended on the effective date of this subsection.

22 (5) The treatment of section 440.03 (13) (b) of the statutes and the renumbering
23 and amendment of section 440.03 (13) of the statutes first apply to applications for
24 credentials or credential renewals received on the effective date of this subsection.

1
2
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INSERT 10-23:

SECTION 1. 157.62 (2) (e) of the statutes is created to read:
157.62 (2) (e) The department shall provide a copy of each report filed under
par. (a) to the city, village or town in which the cemetery that the cemetery authority
operates is located.

(END OF INSERT)

✓
INSERT 11-13:

1
2 **SECTION 1.** 157.64 (3) of the statutes is amended to read:

3 157.64 (3) Any person who intentionally commits an act specified under sub.
4 (2) (a) to ~~(f)~~ (e) with intent to defraud may be punished for theft under s. 943.20.

5 History: 1989 a. 307; 1991a. 269; 1993a. 386.

✓
INSERT 133:

6 **SECTION 2.** 440.92 (1) (a) of the statutes is amended to read:

7 440.92 (1) (a) Except as provided in subs. (4), ~~(9)~~ ^(a) and (10), every individual
8 who sells or solicits the sale of cemetery merchandise or an undeveloped space under
9 a preneed sales contract and, if the individual is employed by or acting as an agent
10 for a cemetery authority or any other person, that cemetery authority or other person
11 is required to be registered under this subsection.

12 History: 1989 a. 307; 1991a. 16, 32, 39, 269; 1993 a. 16, 1995 a. 27 ss. 6605, 9116 (5); 1997 a. 295; 1997 a. 79, 191.

✓
INSERT 13-9:

13 **SECTION 3.** 440.95 (4) (d) of the statutes is repealed.

(END OF INSERT)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3275/P1dn

MDK:.....

cmu

Representative Morris-Tatum:

Please review this draft very carefully to make sure that it achieves your intent. Due to time constraints, I was not able to resolve all my questions about your intent. Therefore, please note the following in particular about the draft:

1. In general, I am not sure how to treat the exemptions under current law that apply to cemeteries operated by religious societies and not-for-profit ~~cemeteries~~. I assume that you want all cemetery authorities to register and provide an annual report to DORL, including cemeteries operated by religious societies and not-for-profit ~~cemeteries~~. However, the draft generally maintains other exemptions under current law that apply to not-for-profit cemeteries.

2. I responded to your request for standardized reporting and auditing of ~~cemeteries~~ by requiring all cemetery authorities to file the annual report specified in s. 157.62 (2) (a), stats. Is this okay?

3. Because the registration requirements for cemetery salespersons and preneed sellers are related to the registration requirements for cemetery authorities, the draft makes comparable changes to those requirements. Therefore, I have similar questions as under item 1 above regarding your intent.

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5. The draft increases the penalty for failure to notify specified family members about reburial of human remains from \$200 to \$1,000, and also provides for imprisonment for not more than 90 days. Is this okay?

6. The amendment of s. 157.10, stats., is intended to carry out your intent with respect to allowing family ~~members~~ to be buried in cemetery lots. I don't think that it's necessary to amend s. 157.111, stats., for this purpose.

7. ~~Please~~ review the dollar amounts for the death certificate fees under proposed s. 69.22 (1) (d) and (e). ~~Are~~ they okay?

8. Proposed s. 25.85 (2) that is included in the instructions is not legally necessary, so I have not included it in this draft.

organizations

9. I'm not sure ~~why~~ it's necessary to include a definition for cemetery or mausoleum in proposed s. 157.117. Without a definition, isn't it clear that cemetery or mausoleum means **any** cemetery or mausoleum, regardless of ownership?

10. The instructions refer to a contract between DORL and a trustee appointed by a court, but do not elaborate on the nature of this contract. Therefore, I have not included such a reference. What is your intent regarding the contract? ✓ ✓

11. I'm not sure about the relationship between proposed s. 157.117 (2) (d) and (e) in the instructions and have not included proposed s. 157.117 (2) (d) in this draft.

12. I was not sure about your intent regarding other portions of the instructions. For example, I understand that "stacking" is a concern, but I am not sure about the exact nature of the problem or how it should be addressed. I recommend that we discuss the extent to which this draft does **not** address your concerns so that your concerns may be addressed in the next version of the draft.

I would be happy to meet with you or your representatives to resolve the above issues. Please contact me at your earliest convenience.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3275/P1dn
MDK:cmh:mrc

July 21, 1999

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G-NOTE

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 **AN ACT to repeal** 157.115 (1) (b) 2., 157.115 (1) (c), 157.625, 157.63, 157.64 (2) (f),
2 440.91 (6m) and (7), 440.92 (9) and 440.95 (4) (d); **to renumber** 157.115 (1) (b)
3 1.; **to renumber and amend 440.03** (13); **to amend** 69.18 (1) (bm) (intro.),
4 69.22 (1) (a), 157.062 (9), 157.08 (5), 157.10, 157.11 (11), 157.115 (2) (b), 157.128
5 (3) (b), 157.19 (5) (a), 157.62 (1) (a) (intro.), 157.62 (2) (a), 157.62 (6), 157.64 (3),
6 440.91 (1), 440.91 (2) (intro.), 440.92 (1) (a) and 440.92 (10); and **to create**
7 20.165 (1) (q), 25.17 (1) (at), 25.85, 69.22 (1) (d) and (e), 69.22 (lr), 157.065 (1)
8 (b) 8., 157.105, 157.117, 157.61, 157.62 (2) (b) 8., 157.62 (2) (e), 157.64 (2) (h),
9 440.03 (13) (b) and 445.12 (1m) of the statutes; **relating to:** creating a cemetery
10 management reserve fund, regulation of cemetery authorities, salespersons
11 and preneed sellers, appointment of trustees for certain cemeteries and

INSERT A

1 mausoleums, identification of human remains, granting rule-making
2 authority, making an appropriation and providing a penalty.

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be prepared for a subsequent version of this draft.~~

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

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

4 20.165 **(1)** (q) *Cemetery and mausoleum trustee disbursements.* From the
5 cemetery management reserve fund, a sum sufficient to make disbursements to
6 trustees under the rules promulgated under s. 157.117 (4) (a).

7 **SECTION 2.** 25.17 (1) (at) of the statutes is created to read:

8 25.17 **(1)** (at) Cemetery management reserve fund (s. 25.85);

9 **SECTION 3.** 25.85 of the statutes is created to read:

10 **25.85 Cemetery management reserve fund.** There is established a
11 separate nonlapsible trust fund designated as the cemetery management reserve
12 fund, to consist of each of the following:

13 **(1)** The moneys received from death certificate filing fees under s. 69.22 (1) (d).

14 **(2)** The moneys received from the issuance of copies of death certificates under
15 s. 69.22 (1) (e).

16 **(3)** The moneys received from surcharges on the sale of cemetery lots and
17 mausoleum spaces under s. 157.105.

18 **SECTION 4.** 69.18 (1) (bm) (intro.) of the statutes is amended to read:

1 69.18 (1) (bm) (intro.) A person required to file a certificate of death under par.
2 (b) shall obtain the information required for the certificate of death from the next of
3 kin or the best qualified person or source available. The person filing the certificate
4 of death shall enter his or her signature on the certificate and include his or her
5 address and the date of signing and shall present or mail the certificate, within 24
6 hours after being notified of the death, to the physician, coroner or medical examiner
7 responsible for completing and signing the medical certification under sub. (2).
8 Within 2 days after receipt of the medical certification under sub. (2), the person
9 filing the certificate of death shall mail or present the certificate of death, together
10 with the fee required under s. 69.22 (1) (d), in:

11 **SECTION 5.** 69.22 (1) (a) of the statutes is amended to read:

12 69.22 (1) (a) Except as provided under ~~par. (e)~~ pars. (c) and (e), \$7 for issuing
13 one certified copy of a vital record and \$2 for any additional certified copy of the same
14 vital record issued at the same time.

15 **SECTION 6.** 69.22 (1) (d) and (e) of the statutes are created to read:

16 69.22 (1) (d) Ten dollars for receiving a death certificate filed by a person
17 required to file a certificate of death under s. 69.18 (1) (b), which shall be forwarded
18 to the state treasurer under sub. (1r).

19 (e) Eight dollars for issuing a copy of a death certificate, \$1 of which shall be
20 forwarded to the state treasurer under sub. (1r).

21 **SECTION 7.** 69.22 (1r) of the statutes is created to read:

22 69.22 (1r) By the 15th day of the first month following the end of a calendar
23 quarter, the state registrar and any person acting under this subchapter shall
24 forward to the state treasurer the amounts specified in sub. (1) (d) and (e) that are

1 received during the calendar quarter. The state treasurer shall credit all amounts
2 received under this subsection to the cemetery management reserve fund.

3 **SECTION 8.** 157.062 (9) of the statutes is amended to read:

4 157.062 (9) **EXEMPTIONS FOR CERTAIN NONPROFIT CEMETERIES.** In lieu of
5 delivering a certification, resolution or copy of proceedings to the department of
6 financial institutions under sub. (1), (2) or (6) (b), a cemetery association ~~that is not~~
7 ~~required to be registered under s. 440.91(1)~~ and that is not organized or conducted
8 for pecuniary profit shall deliver the certification, resolution or copy of proceedings
9 to the office of the register of deeds of the county in which the cemetery is located.

10 **SECTION 9.** 157.065 (1) (b) 8. of the statutes is created to read:

11 157.065 (1) (b) 8. A trustee appointed under s. 157.117 (2) (b).

12 **SECTION 10.** 157.08 (5) of the statutes is amended to read:

13 157.08 (5) Subsections (1) and (2) (b) do not apply to a religious society
14 organized under ch. 187, and sub. (2) (b) does not apply to a cemetery authority ~~that~~
15 ~~is not required to be registered under s. 440.91(1)~~ and that is not organized or
16 conducted for pecuniary profit.

17 **SECTION 11.** 157.10 of the statutes is amended to read:

18 **157.10 Alienation and use of cemetery lots.** While any person is buried in
19 a cemetery lot, the cemetery lot shall be inalienable, without the consent of the
20 cemetery authority, and on the death of the owner, ownership of the cemetery lot
21 shall descend to the owner's heirs; but any one or more of such heirs may convey to
22 any other heir his or her interest in the cemetery lot. No human remains may be
23 buried in a cemetery lot except the human remains of one having an interest in the
24 cemetery lot, or a relative, or the husband or wife of such person, or his or her relative,
25 except by the consent of all persons having an interest in the cemetery lot. A

1 cemetery authority may not prohibit the burial in a cemetery lot of a relative of a
2 person with an interest in the cemetery lot, husband or wife of such a person, or
3 relative of a husband or wife of such a person.

4 **SECTION 12.** 157.105 of the statutes is created to read:

5 **157.105 Surcharge on cemetery lot and mausoleum space sales.** A
6 cemetery authority that sells a cemetery lot or a person operating a mausoleum that
7 sells a mausoleum space shall assess a surcharge of \$10 on each cemetery lot or
8 mausoleum space sold by the seller. By the 15th day of the first month following the
9 end of a calendar quarter, a cemetery authority or person operating a mausoleum
10 shall forward to the state treasurer the surcharges assessed under this section
11 during the calendar quarter. The state treasurer shall credit all amounts received
12 under this section to the cemetery management reserve fund.

13 **SECTION 13.** 157.11 (11) of the statutes is amended to read:

14 **157.11 (11) EXEMPTION FOR CERTAIN NONPROFIT CEMETERIES.** Subsection (9g) does
15 not apply to a cemetery authority * —s-440.91
16 (1) and that is not organized or conducted for pecuniary profit.

17 **SECTION 14.** 157.115 (1) (b) 1. of the statutes is renumbered 157.115 (1) (b).

18 **SECTION 15.** 157.115 (1) (b) 2. of the statutes is repealed.

19 **SECTION 16.** 157.115 (1) (c) of the statutes is repealed.

20 **SECTION 17.** 157.115 (2) (b) of the statutes is amended to read:

21 157.115 (2) (b) No cemetery authority may resell an abandoned cemetery lot
22 unless the cemetery authority complies with the requirements in this subsection or
23 the cemetery lot is sold by a trustee under s. 157.117.

24 **SECTION 18.** 157.117 of the statutes is created to read:

1 **157.117 Trustees for certain cemeteries and mausoleums. (1)**

2 **DEFINITIONS.** In this section:

3 (a) "Cemetery" does not include a cemetery the ownership, control or
4 management of which has been assumed by a municipality under s. 157.115 (1) (b)
5 or (c), 1997 stats., or a predecessor statute.

6 (b) "Local governmental unit" means a municipality or county.

7 (c) "Municipality" means a city, village or town.

8 (d) "Trustee" means a trustee appointed under sub. (2) (b).

9 (2) **APPOINTMENT OF TRUSTEE.** (a) The attorney general, a local governmental
10 unit, or 6 or more residents of a municipality in which a cemetery or mausoleum is
11 located may petition the circuit court for the county in which the cemetery or
12 mausoleum is located for the appointment of a trustee for the cemetery or
13 mausoleum. A petitioner under this subsection shall serve a copy of the petition on
14 the attorney general and the department.

15 (b) A court shall schedule a hearing on a petition filed under par. (a) within 90
16 days after the petition is filed with the court. If the court finds after a hearing that
17 a cemetery or mausoleum is neglected, abandoned, in disuse, improperly maintained
18 or financially unsound, the court shall appoint as a trustee for the cemetery or
19 mausoleum the department or another capable and competent person to serve as
20 trustee of the cemetery or mausoleum under this section.

21 (c) An owner of a cemetery or mausoleum may petition the court in a proceeding
22 under par. (b) for an order surrendering title to the cemetery or mausoleum if the
23 owner believes itself to be incapable of continuing to operate the cemetery or
24 mausoleum. The court may grant the petition if it finds that the cemetery or
25 mausoleum is neglected, abandoned, in disuse, improperly maintained or financially

1 unsound. If the court grants the petition, it shall transfer title to the cemetery or
2 mausoleum to the state and appoint a trustee under par. (b).

3 (d) All disputes relating to the appointment of a trustee or the actions of a
4 trustee appointed under this section shall be resolved by the court that appointed the
5 trustee.

6 (3) **TRUSTEE POWERS AND DUTIES.** (a) A trustee shall do each of the following:

7 1. Be responsible for the management, maintenance and operation for each
8 cemetery or mausoleum under trusteeship.

9 2. Comply with the record-keeping, audit and reporting requirements of s.
10 157.62 (2). A trustee shall provide the court with a copy of all records, audits and
11 reports filed under this subdivision.

12 3. Provide the court with any additional information, records or reports that
13 the court may direct.

14 (b) A trustee may petition the court that appointed the trustee for any of the
15 following:

16 1. Transfer of ownership of a cemetery or mausoleum and all tangible and
17 intangible real and personal property to the state under the management. of the
18 trustee.

19 2. Termination of the trusteeship and reversion of ownership and operation of
20 a cemetery or mausoleum to the previous owner.

21 3. Termination of the trusteeship and transfer of ownership and operation of
22 a cemetery or mausoleum to the state or a new owner.

23 4. Removal and reinternment of human remains in accordance with the
24 requirements of this subchapter.

1 5. Termination of the trusteeship and closure of a cemetery or mausoleum after
2 removal and reinternment of human remains under subd. 4.

3 (c) A trustee may do any of the following:

4 1. Seek a new owner or operator of a cemetery or mausoleum, including actively
5 marketing the cemetery or mausoleum and taking any other action necessary or
6 useful to effect the sale of the cemetery or mausoleum.

7 2. Assess cemetery lots for cleaning, care or improvement under s. 157.11 (7).

8 3. Expend funds disbursed from the cemetery management reserve fund for the
9 purpose of exercising its powers or carrying out its duties under this section.

10 4. Employ professional, legal and technical experts, any such other managers,
11 management personnel, agents and employes as may be required to exercise its
12 powers or carry out its duties under this section.

13 5. Take any other action necessary or useful to the management or trusteeship
14 of a cemetery or mausoleum.

15 (4) DEPARTMENT POWERS AND DUTIES. (a) The department shall promulgate rules
16 establishing requirements and procedures to make disbursements from the
17 appropriation under s. 20.165 (1) (q) to trustees.

18 (b) If appointed as a trustee under sub. (2) (b), the department shall have all
19 the powers and duties specified in sub. (3).

20 (c) The department may promulgate rules to carry out the purposes of this
21 section.

22 (5) TERMINATION OF TRUSTEESHIP. A court that appointed a trustee shall
23 terminate the trusteeship if any of the following applies:

24 (a) The owner or operator of a cemetery or mausoleum demonstrates to the
25 satisfaction of the court that the conditions that necessitated the trusteeship have

1 been remedied and that it is competent and capable of managing the cemetery or
2 mausoleum.

3 (b) The court finds that a new operator is competent and capable of managing
4 the cemetery or mausoleum. Upon making a finding under this paragraph, the court
5 shall approve the transfer of the management of the cemetery or mausoleum to the
6 new operator.

7 (c) The court approves the sale or transfer of a cemetery or mausoleum to the
8 state, or to another public or private owner that the court finds is capable and
9 competent to manage the cemetery or mausoleum on a financially sound basis.

10 (d) The court approves the closure of a cemetery or mausoleum after all human
11 remains have been removed and reinterred.

12 **SECTION 19.** 157.128 (3) (b) of the statutes is amended to read:

13 157.128 (3) (b) A cemetery consisting of less than 20 contiguous acres may be
14 dedicated by a cemetery authority ~~that is not required to be registered under s.~~
15 ~~440.01(1) and~~ that is not organized or conducted for pecuniary profit.

16 **SECTION 20.** 157.19 (5) (a) of the statutes is amended to read:

17 157.19 (5) (a) This section does not apply to care funds under s. 157.11 (9g) that
18 are deposited with a city or county as provided under s. 157.11 (9g) (a), ~~to care funds~~
19 ~~of a cemetery for which a certification under s. 157.63 is effective, to preneed trust~~
20 ~~funds of a cemetery for which a certification under s. 440.02(9) is effective, or to care~~
21 ~~funds or preneed trust funds of a cemetery authority that is not required to be~~
22 ~~registered under s. 440.01(1) and~~ that is not organized or conducted for pecuniary
23 profit.

24 **SECTION 21.** 157.61 of the statutes is created to read:

1 **157.61 Identification of human remains. (1)** In this section, “identification
2 tag” means a tag that identifies a decedent.

3 (2) The department shall promulgate rules that require a funeral director who
4 prepares a dead human body for burial to attach an identification tag to the human
5 remains and to the exterior of a casket or burial vault that is used for burial of the
6 human remains. The rules shall also require a person who cremates human remains
7 to attach an identification tag to the interior and exterior of the cemetery
8 merchandise and mausoleum space that is used to contain the human remains.

9 (3) No cemetery authority may accept human remains for burial unless the
10 identification tags specified in sub. (2) have been attached to the casket and burial
11 vault, or cemetery merchandise and mausoleum space, that is used for burial of the
12 human remains.

13 **SECTION 22.** 157.62 (1) (a) (intro.) of the statutes is amended to read:

14 157.62 **(1)** (a) (intro.) Except as provided in par. (b) and ~~e. 157.625~~, every
15 cemetery association shall file an annual report with the department of financial
16 institutions. The report shall be made on a calendar-year basis unless the
17 department of financial institutions, by rule, provides for other reporting periods.
18 The report is due on the 60th day after the last day of the reporting period. The
19 annual report shall include all of the following:

20 **SECTION 23.** 157.62 (2) (a) of the statutes is amended to read:

21 157.62 (2) (a) ~~Except as provided in ss. 157.625 and 157.63 (1), every~~ Every
22 cemetery authority shall file an annual report with the department. The report shall
23 be made on a form prescribed and furnished by the department. The report shall be
24 made on a calendar-year basis unless the department, by rule, provides for other

1 reporting periods. The report is due on the 60th day after the last day of the reporting
2 period.

3 **SECTION 24.** 157.62 (2) (b) 8. of the statutes is created to read:

4 157.62 (2) (b) 8. Information that identifies the location of all human remains
5 that are buried at the cemetery operated by the cemetery authority. The department
6 shall promulgate rules that establish requirements for providing information under
7 this svbdivision.

8 **SECTION 25.** 157.62 (2) (e) of the statutes is created to read:

9 157.62 (2) (e) The department shall provide a copy of each report filed under
10 par. (a) to the city, village or town in which the cemetery that the cemetery authority
11 operates is located.

12 **SECTION 26.** 157.62 (6) of the statutes is amended to read:

13 157.62 (6) **AUDIT.** ~~Except as provided in ss. 157.625, 157.63 (5) and 440.92 (9)~~
14 ~~(e), the~~ The department ~~may~~ shall audit, at. reasonable times and frequency, the
15 records, trust funds and accounts of any cemetery authority, including records, trust
16 funds and accounts. pertaining to services provided by a cemetery authority which
17 are not otherwise subject to the requirements under this chapter. The department
18 ~~may~~ shall conduct audits under this subsection on a random basis, and shall conduct
19 all audits under this subsection without providing prior notice to the cemetery
20 authority.

21 **SECTION 27.** 157.625 of the statutes is repealed.

22 **SECTION 28.** 157.63 of the statutes is repealed.

23 **SECTION 29.** 157.64 (2) (f) of the statutes is repealed.

24 **SECTION 30.** 157.64 (2) (h) of the statutes is created to read:

25 157.64 (2) (h) Violate/s §. 157.112.

1 **SECTION 31.** 157.64 (3) of the statutes is amended to read:

2 157.64 (3) Any person who intentionally commits an act specified under sub.
3 (2) (a) to ~~(f)~~ (e) with intent to defraud may be punished for theft under s. 943.20.

4 **SECTION 32.** 440.03 (13) of the statutes is renumbered 440.03 (13) (a) and
5 amended to read:

6 440.03 (13) (a) The Except as provided in par. (b). the department may conduct
7 an investigation to determine whether an applicant for a credential issued under chs.
8 440 to 480 satisfies any of the eligibility requirements specified for the credential,
9 including whether the applicant does not have an arrest or conviction record.

10 (c) In conducting an investigation under ~~this subsection~~ par. (a) or (b), the
11 department may require an applicant to provide any information that is necessary
12 for the investigation or, for the purpose of obtaining information related to an arrest
13 or conviction record of an applicant, to complete forms provided by the department
14 of justice or the federal bureau of investigation. The department shall charge the
15 applicant any fees, costs or other expenses incurred in conducting the investigation
16 under ~~this subsection~~ par. (a) or (b).

17 **SECTION 33.** 440.03 (13) (b) of the statutes is created to read:

18 440.03 (13) (b) Before granting a credential to a cemetery authority, cemetery
19 salesperson or preneed seller, or renewing such a credential, the department shall
20 conduct an investigation to determine whether a person specified in s. 440.93 (1)
21 (intro.) has been convicted of an offense specified in s. 440.93 (1) (d).

22 **SECTION 34.** 440.91 (1) of the statutes is amended to read:

23 440.91 (1) ~~Except as provided in sub. (6m), every~~ Every cemetery authority ~~that~~
24 ~~sells or solicits the sale of a total of 10 or more cemetery lots or mausoleum spaces~~
25 ~~during a calendar year and that pays any commission or other compensation to any~~

1 ~~person for selling or soliciting the sale of its cemetery lots or mausoleum spaces~~ shall
2 register with the department. The registration shall be in writing and shall include
3 the names of the officers of the cemetery authority.

4 **SECTION 35.** 440.91 (2) (intro.) of the statutes is amended to read:

5 440.91 (2) (intro.) Except as provided in ~~subs. (7) and sub. (10)~~, every individual
6 who sells or solicits the sale of, or who expects to sell or solicit the sale of, a total of
7 10 or more cemetery lots or mausoleum spaces during a calendar year shall **register**
8 with the department. An individual may not be registered as a cemetery salesperson
9 except upon the written request of a cemetery authority and the payment of the fee
10 specified in s. 440.05 (1). The cemetery authority shall certify in writing to the
11 department that the individual is competent to act as a cemetery salesperson.
12 Within 10 days after the certification of any cemetery salesperson, the cemetery
13 salesperson shall verify and furnish to the department, in such form as the
14 department prescribes, all of the following information:

15 **SECTION 36.** 440.91 ~~(6m)~~ and (7) of the statutes are repealed.

16 **SECTION 37.** 440.92 (1) (a) of the statutes is amended to read:

17 440.92 (1) (a) Except as provided in subs. ~~(4), (9) (a)~~ and (10), every individual
18 who sells or solicits the sale of cemetery merchandise or an undeveloped space under
19 a preneed sales contract and, if the individual is employed by or acting as an agent
20 for a cemetery authority or any other person, that cemetery authority or other person
21 is required to be registered under this subsection.

22 **SECTION 38.** 440.92 (9) of the statutes is repealed.

23 **SECTION 39.** 440.92 (10) of the statutes is amended to read:

INSERT A:

This bill provides for the appointment of trustees that are responsible for the operation of certain abandoned or neglected cemeteries and mausoleums. The bill also establishes a cemetery management reserve fund that may be used by trustees to carry out their responsibilities under the bill. In addition, the bill makes certain changes to the registration of cemetery authorities, cemetery salespersons and preneed sellers under current law and makes other changes to requirements regarding cemeteries and the burial of human remains.

Cemetery and mausoleum trustees.

Under current law, if the operator of a cemetery fails to care for the cemetery for ^{one} 1 year or more, the city, village or town in which the cemetery is located may, but is not required to, take control of the cemetery. However, if the operator has failed to care for the cemetery for ^{five} 5 years or more, the city, village or town is required to take control of the cemetery. In addition, under certain circumstances, the town board of a town in which an abandoned or neglected cemetery is located may be required to operate the cemetery.

This bill repeals the above provisions and allows the circuit court for the county in which a cemetery or mausoleum is located to appoint the department of regulation and licensing (DORL) or another person as a trustee to operate the cemetery or mausoleum. The attorney general, city, village, town, county or ^{six} 6 or more residents of the city, village, town or county in which the cemetery or mausoleum is located may petition the court for such an appointment. The court is required to appoint a trustee if the court finds, after a hearing, that the cemetery or mausoleum is neglected, abandoned, in disuse, improperly maintained or financially unsound. The bill also allows the owner of the cemetery or mausoleum to petition the court to transfer title of the cemetery or mausoleum to the trustee that is appointed. ^{to}

The bill requires a trustee that is appointed to operate the cemetery or mausoleum and comply with the record-keeping, audit and reporting requirements that apply to operators of cemeteries under current law. The bill allows a trustee to seek a new owner or operator of the cemetery or mausoleum, use the procedure under current law for assessing cemetery lots for cleaning, care or improvement purposes and to take any other action necessary or useful to the management or trusteeship of the cemetery or mausoleum. In addition, the trustee may petition the court for the following: 1) transfer of ownership of the cemetery or mausoleum to the state under the trustee's management or to a new owner; 2) reversion of ownership and operation of the cemetery or mausoleum to the previous owner; or 3) closure of the cemetery or mausoleum after removal and reinternment of human remains.

The court that appointed a trustee under the bill is required to terminate the trusteeship if the owner or operator of the cemetery or mausoleum demonstrates that the conditions that necessitated the trusteeship have been remedied. The court may also terminate the trusteeship if the court finds that a new owner or operator is

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competent and capable of managing the cemetery or mausoleum or if the court approves the closure of the cemetery or mausoleum.

The bill also creates a cemetery management reserve fund that may be used by a trustee to exercise its powers and carry out its duties under the bill. The fund consists of moneys collected from the following: 1) a \$10 filing fee for death certificates; 2) a \$1 surcharge on copies of death certificates; and 3) a \$10 surcharge on the sale of cemetery lots and mausoleums. DORL is required to promulgate rules that establish procedures and requirements for disbursements from the fund to trustees.

Cemetery authorities, cemetery salespersons and preneed sellers.

With certain exceptions, current law requires cemetery authorities, cemetery salespersons and preneed sellers to register with DORL. A "cemetery authority" is any person that owns or operates a cemetery, a "cemetery salesperson" is person that sells ~~10~~ or more cemetery lots or mausoleum spaces in a calendar year and a "preneed seller" is a person that sells certain cemetery merchandise or undeveloped mausoleum spaces under preneed contracts. There is an exemption from the registration requirements for each of the following:

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1) A cemetery authority that sells less than ~~10~~ cemetery lots or mausoleum spaces per year.

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2) A cemetery authority of a cemetery organized or operated by a town, village, city, church, synagogue, mosque, religious, fraternal or benevolent society or incorporated college of a religious order.

3) A cemetery salesperson that sells cemetery lots or mausoleum spaces in a cemetery described in item 2.

4) A preneed seller for a cemetery that is affiliated with an organized religious society or a religious society that files an annual certification statement with DORL.

This bill eliminates each of the above exemptions. The bill also requires DORL to investigate to determine whether any person that applies for registration as a cemetery authority, cemetery salesperson or preneed seller, or whether certain business representatives that are related to such a person, have been convicted of an offense the circumstances of which substantially relate to the sale of a cemetery lot, mausoleum space or cemetery merchandise.

Other requirements for cemeteries and the burial of human remains.

Under current law, with certain exceptions, cemetery authorities must submit reports to DORL that include certain financial and other information. The following cemetery authorities are exempt from the reporting requirement: 1) certain cemetery authorities that are exempt from other requirements regarding care and preneed trust funds; 2) cemetery authorities with annual operating budgets of \$2,500 or less; 3) cemetery authorities that sell less than ~~10~~ cemetery lots or mausoleum spaces per year; and 4) cemetery authorities of cemeteries organized or operated by a town, village, city, church, synagogue, mosque, religious, fraternal or benevolent society or incorporated college of a religious order. In addition, cemetery authorities of cemeteries that are affiliated with an organized religious society or a religious society are required to submit an annual certification to DORL, rather than an annual report. This bill eliminates each of these exemptions from the reporting

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requirement. The bill also requires a cemetery authority affiliated with an organized religious society or a religious society to submit the annual report, rather than the annual certification.

The bill also requires a cemetery authority to include in the annual report information that identifies the location of all human remains that are buried at the cemetery. DORL is required to promulgate rules that establish requirements for providing such information in the report. In addition, the bill requires DORL to provide a copy of the annual report to each city, village or town in which the cemetery is located. Also under the bill, DORL is required to conduct certain financial audits of cemetery authorities. Under current law, DORL is allowed, but not required, to conduct the audits.

In addition, the bill makes certain changes to current law regarding the burial of human remains. Under the bill, a cemetery may not accept human remains for burial unless a tag that identifies the decedent has been attached to the remains and to the exterior of the casket or **burial vault** or, in the case of remains that have been cremated, attached to the interior **and exterior** of the cemetery merchandise and mausoleum space that contains **the remains**. Under the bill, the tags must be attached by the funeral director who prepares the human body for burial or the person who cremates the human remains. Also, the bill prohibits a cemetery authority from prohibiting the burial in a cemetery lot of any of the following: 1) a relative of person with an interest in the lot; 2) the husband or wife of such a person; or 3) a relative of the husband or wife of such a person.

Finally, the bill increases the penalty under current law that is applicable to a cemetery authority that violates certain requirements regarding the reburial of human remains. Under current law, the penalty is a forfeiture of no more than \$200. Under the bill, the penalty is a forfeiture of no more than \$1,000 or imprisonment for no more than 90 days or both.

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(END OF INSERT)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3275/1dn
MDK:.....

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DATE

Representative Morris-Tatum:

This version of the bill is identical to the previous version, except for the inclusion of an analysis.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3275/1dn
MDK:cmh:km

October 22, 1999

Representative Morris-Tatum:

This version of the bill is identical to the previous version, except for the inclusion of an analysis.

Mark D. Kunkel
Legislative Attorney
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**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 10/22/1999

To: Representative Morris-Tatum

Relating to LRB drafting number: LRB-3275

Topic

Cemetery regulation

Subject(s)

Occupational Reg. - cem reg

1. **JACKET** the draft for introduction

Johnnie Morris-Tatum

in the **Senate** or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-356 1. If you have any questions relating to the attached draft, please feel free to call me.

Mark D. Kunkel, Legislative Attorney
Telephone: (608) 266-O 13 1