

**1999 DRAFTING REQUEST**

**Bill**

Received: **03/29/1999**

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Robert Wirch (608) 267-8979**

By/Representing: **Tom Hanson**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Occupational Reg. - cem reg**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Preneed trust funds

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	kunkemd 08/19/1999	jgeller 08/20/1999	mclark 08/20/1999	_____	lrb_docadmin 08/20/1999	lrb_docadmin 11/02/1999	

FE Sent For:

<END>

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1/?	kunkemd	1/8/00 jlg	MRC 8/20	MRC/jlg 8/20			

FE Sent For:

<END>

-2643

3/24/99

for Sen. Wirth

RE cemeteries

req. 100% of funds rec'd must be  
"Trusted"

currently = 60/40

change to 100%

> exempt all cemeteries administered by some  
(administrative)  
faith (or run by a municipality (towns))

~~not~~ (provided) they don't sell funeral  
merchandise

Tom Hanson  
256-5799

- change 60/40 → 100% trust  
But exempt faith, munis,  
provided ~~that~~ persons who don't  
sell cem. merch?  
fun. merch?



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-2643/1

MDK:.....

D-NOTE

SOON

1999 BILL

JLg

gen

1 AN ACT ...; relating to: preneed sales contracts for sales of cemetery  
2 merchandise.

*Analysis by the Legislative Reference Bureau*

Under current law, with certain exceptions, a preneed seller that sells cemetery merchandise under a preneed sales contract is required to deposit into a preneed trust fund either an amount equal to 40% of each payment of principal that is received from the sale, or a specified percentage of each payment that is based on the actual cost of the cemetery merchandise to the preneed seller, whichever is greater.

This bill changes this requirement so that, with <sup>two</sup> exceptions, a preneed seller that sells cemetery merchandise under a preneed sales contract is required to deposit 100% of each payment of principal that is received into a preneed trust fund. The bill exempts the following preneed sellers from this requirement: 1) a preneed seller who sells cemetery merchandise as an employe or agent of a cemetery authority of a cemetery that is affiliated with a religious society; and 2) a preneed seller who sells cemetery merchandise as an employe or agent of a cemetery authority of a cemetery that is operated by a city, village or town. To qualify for either exception, the cemetery authority must not sell funeral merchandise or funeral services.

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

3 SECTION 1. 440.90 (3m) of the statutes is created to read:

## BILL

1 440.90 (3m) <sup>✓</sup>“Funeral merchandise or funeral services” has the meaning given  
 2 in s. 445.125 (3m) (a) 4. <sup>✓</sup>

3 SECTION 2. 440.92 (2) (i) of the statutes is amended to read:

4 440.92 (2) (i) If a preneed sales contract includes provisions for the sale of  
 5 cemetery merchandise or an undeveloped space that is subject to the trusting  
 6 requirements under sub. (3) <sup>✓</sup>(a) (ag), (ar) <sup>✓</sup> and (b) and for the sale of other goods or  
 7 services that are not subject to the trusting requirements under sub. (3) <sup>✓</sup>(a) (ag), (ar)  
 8 and (b), the sale price of the goods or services that are not subject to the trusting  
 9 requirements may not be inflated for the purpose of allocating a lower sale price to  
 10 the cemetery merchandise or undeveloped space that is subject to the trusting  
 11 requirements.

12 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.

13 SECTION 3. 440.92 (3) (a) (intro.) of the statutes is renumbered 440.92 (3) (ag)  
 14 and amended to read:

15 440.92 (3) (ag) A Except as provided in par. (bm) <sup>✓</sup>, a preneed seller shall deposit  
 16 into a preneed trust fund an amount equal to at least 40% <sup>of 100%</sup> ~~of~~ each payment  
 17 of principal that is received from the sale of cemetery merchandise under a preneed  
 18 sales contract, ~~or the wholesale cost ratio for the cemetery merchandise multiplied~~  
 19 ~~by the amount of the payment of principal that is received, whichever is greater.~~

20 (ar) In addition to the amount required to be deposited under ~~this paragraph~~  
 21 par. (ag) <sup>✓</sup> for the sale of cemetery merchandise and except as provided in par. (c), if a  
 22 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

**BILL**

1 principal that is received from the sale of the undeveloped space into a preneed trust  
2 fund, determined as follows:

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.

3 **SECTION 4.** 440.92 (3) (a) 1. and 2. of the statutes are renumbered 440.92 (3)  
4 (ar) 1. and 2.

5 **SECTION 5.** 440.92 (3) (b) of the statutes is amended to read:

6 440.92 (3) (b) The preneed seller shall make the deposits required under par.  
7 (a) ~~(ag)~~ and (ar) within 30 business days after the last day of the month in which each  
8 payment is received. Preneed trust funds shall be deposited and invested as  
9 provided in s. 157.19.

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.

10 **SECTION 6.** 440.92 (3) (bm) of the statutes is created to read:

11 440.92 (3) (bm) A preneed seller is not required to make the deposits required  
12 under par. ~~(ag)~~ if any of the following applies:

13 1. The preneed seller sells the cemetery merchandise as an employe or agent  
14 of a cemetery authority of a cemetery that is affiliated with a religious society  
15 organized under ch. 187~~✓~~ and the cemetery authority does not sell funeral  
16 merchandise or funeral services.

17 2. The preneed seller sells the cemetery merchandise as an employe or agent  
18 of a cemetery authority of a cemetery that is operated by a city, village or town and  
19 the cemetery authority does not sell funeral merchandise or funeral services.

20 **SECTION 7.** 440.92 (3) (c) (intro.) of the statutes is amended to read:

21 440.92 (3) (c) (intro.) A preneed seller is not required to make the deposits  
22 required under par. ~~(a)~~ ~~(ar)~~ 1. and 2. if any of the following applies:

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.

23 **SECTION 8.** 440.92 (3) (d) of the statutes is amended to read:

## BILL

1 440.92 (3) (d) If payments are received under a preneed sales contract for an  
 2 undeveloped space, the preneed seller shall make deposits into the care fund  
 3 required under s. 157.12 (3) in addition to any deposits required under ~~par. (a) (ag)~~ <sup>par. (a) (ag)</sup>  
 4 and (ar).

5 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.

6 SECTION 9. 440.92 (4) (a) (intro.) of the statutes is amended to read:

7 440.92 (4) (a) (intro.) Any person who sells or solicits the sale of cemetery  
 8 merchandise under a preneed sales contract is not required to be registered under  
 9 sub. (1) and the requirements of sub. (3) <sup>(a)</sup> (ag), (ar) and (b) do not apply to the sale  
 10 if all payments received under the preneed sales contract are trusted as required  
 11 under s. 445.125 (1) (a) 1. or if all of the following conditions are met:

12 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.

13 SECTION 10. 440.92 (9) (b) 3. of the statutes is amended to read:

14 440.92 (9) (b) 3. A notarized statement of a person who is legally authorized to  
 15 act on behalf of the religious society under this subsection that, during the 12-month  
 16 period immediately preceding the date on which the certification is filed with the  
 17 department, each employe specified under subd. 2. and the cemetery authority have  
 18 either fully complied or have substantially complied with subs. (2), (3) <sup>(a)</sup> (ag), (ar)  
 19 and (b) and (5).

20 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.

21 SECTION 11. 440.92 (9) (c) of the statutes is amended to read:

22 440.92 (9) (c) If the statement under par. (b) 3. includes a statement of  
 23 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) <sup>(a)</sup> (ag), (ar) or (b) or (5).

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.

SECTION 12. 110.92 (9) (f) of the statutes is amended to read:



**BILL**

1           440.92 (9) (f) The religious society that is affiliated with a cemetery to which  
 2 a certification under this subsection applies is liable for the damages of any person  
 3 that result from the failure of any employe specified under par. (b) 2. or the cemetery  
 4 authority to fully comply with sub. (2), (3) <sup>✓</sup>(a) ~~(ag), (ar)~~ or (b) or (5) during the  
 5 12-month period for which such compliance has been certified under this subsection.

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.

6           **SECTION 13. Initial applicability.**

7           (1) The treatment of sections 440.90 (3m) <sup>✓</sup> ~~and~~ 440.92 (2) (i), (3) (a) (intro.), (b), (bm) <sup>✓</sup>  
 8 and (d), (4) (a) (intro.) and (9) (b) 3., (c) <sup>✓</sup> and (f) <sup>✓</sup> of the statutes first applies to payments  
 9 received under preneed sales contracts that are entered into, extended, modified or  
 10 renewed on the effective date of this subsection.

11           **SECTION 14. Effective date.**

12           (1) This act takes effect on the first day of the 3rd <sup>✓</sup> month beginning after  
 13 publication.

14

(END)

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

LRB-2643/1dn

MDK:.....

↑  
Jg

Senator Wirch:

Please review this bill, which was requested on your behalf by Tom Hanson, very carefully to make sure that it achieves your intent. In particular, please note the following questions:

1. Under current law, there is a 40% <sup>3</sup>trusting requirement for: 1) cemetery merchandise sold under a preneed contract, and 2) under certain circumstances, undeveloped space sold under a preneed contract. I assumed that you want to change only the requirement for sales of cemetery merchandise, and not the requirement for sales of undeveloped space. Is this correct?

2. Are the exemptions in proposed s. 440.92 (3) (bm) <sup>4</sup>okay? Note that, under s. 445.125 (3m) (a) 4., "funeral merchandise or funeral services" are defined as "personal property or services typically sold or provided in connection with the final disposition of human remains, including caskets or other primary containers not preplaced into the burial excavation of a grave, rental, temporary or disposable caskets or containers, outer burial containers not preplaced into the burial excavation of a grave, transportation containers, funeral clothing and accessories, embalming services and funeral directing services". In addition, under this definition, "funeral merchandise or funeral services" does not include "a cash advance item or opening and closing costs that are associated with the burial of a deceased person".

3. The bill has a 3-month delayed effective date in order to give persons advance notice of its requirements. Is this okay?

If you have any questions or redraft instructions, please contact me.

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-2643/1dn  
MDK:jlg:mrc

August 20, 1999

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Mark D. Kunkel  
Legislative Attorney  
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E-mail: Mark.Kunkel@legis.state.wi.us

**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:** 08/20/1999

**To:** Senator Wirch

**Relating to LRB drafting number:** LRB-2643

**Topic**

Preneed trust funds

**Subject(s)**

Occupational Reg. - cem reg

1. **JACKET** the draft for introduction \_\_\_\_\_

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 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Mark D. Kunkel, Legislative Attorney  
Telephone: (608) 266-0131