

### 2001 DRAFTING REQUEST

#### Bill

Received: 11/05/2001

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - LRC**

By/Representing: **Rachel Letzing**

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

Drafter: **kunkemd**

May Contact:

Addl. Drafters:

Subject: **Occupational Reg. - misc**

Extra Copies:

Submit via email: **NO**

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#### Pre Topic:

No specific pre topic given

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#### Topic:

Various remedial changes

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#### Instructions:

See Attached

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#### 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>
/P1	kunkemd	gilfokm	jfrantze	_____	lrb_docadmin		
	11/05/2001	11/06/2001	11/07/2001	_____			
	kunkemd	csicilia		_____			
	12/04/2001	12/04/2001		_____			
/1			kfollet	_____	lrb_docadmin	lrb_docadmin	
			12/04/2001	_____			
				_____			
				_____			

FE Sent For: .

*None needed*

<END>

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/P1	kunkemd 11/05/2001	gilfokm 11/06/2001	jfrantze 11/07/2001	_____	lrb_docadmin 11/07/2001		

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*↑ jgs 12/4/01*  
*kgf 12/4*  
*kljif 12/4*  
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Addl. Drafters:

Subject: **Occupational Reg. - misc**

Extra Copies: **RPV**

Submit via email: **NO**

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1?	kunkemd	1/11/16 KMG	Copy ctt 11-5	11/17			

FE Sent For:

<END>

**Grant, Peter**

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**From:** Letzing, Rachel  
**Sent:** Thursday, September 20, 2001 2:09 PM  
**To:** Grant, Peter  
**Subject:** law revision--DPI and DRL

Hi Peter,

The Law Revision Committee met on Tuesday and voted to introduce DPI drafts LRB 1214/1 and LRB 1217/2. Could we get these two rolled into one bill for DPI? We will need to insert section notes later.

Also, they voted to introduce the following DRL drafts:

LRB 2818/p1  
LRB 2821/p1  
LRB 2823/p1  
LRB 2833/p1  
LRB 2838/p1  
LRB 2856/p1

The committee also voted to introduce LRB 2834/p1, as amended by deleting Section 1. Could we have all 7 drafts rolled into one bill for DRL? Again, we'll have to insert section notes later.

The committee also asked that LRB 1198/p1 be broken down into smaller bills by subject matter for easier readability. Also, DRL explained that the sections relating to accountants were included in the budget, so may be deleted from 1198. The committee intends to take up 1198 at the next meeting (not scheduled yet).

Thanks, Peter. Please feel free to call or email if you have any questions.

Rachel E. Letzing  
Legislative Council Staff  
(608) 266-3370  
rachel.letzing@legis.state.wi.us

## Sorted Item List

<u>Store File Name</u>	<u>Text</u>
-2823.1	15.01 (7) of the statutes is amended to read:
-2823.2	15.08 (5) (c) of the statutes is amended to read:
-2823.3	15.085 (5) (c) of the statutes is amended to read:
-2856.1	157.12 (2) (b) of the statutes is amended to read:
-2856.2	157.19 (2) (c) of the statutes is amended to read:
-2856.3	157.19 (5) (a) of the statutes is amended to read:
-2856.4	157.62 (6) of the statutes is amended to read:
-2833.1	227.01 (6) of the statutes is amended to read:
-2834.1	227.485 (3) of the statutes is amended to read:
-2834.2	227.485 (5) of the statutes is amended to read:
-2856.5	423.102 of the statutes is amended to read:
-2821.1	440.01 (1) (d) of the statutes is amended to read:
-2856.6	440.042 (1) of the statutes is renumbered 440.042 and amended to read:
-2856.7	440.042 (2) of the statutes is renumbered 440.043 and amended to read:
-2838.1	440.26 (5) (b) of the statutes is amended to read:
-2856.8	440.92 (1) (a) of the statutes is amended to read:
-2856.9	440.92 (2) (title) of the statutes is renumbered 440.922 (title).
-2856.10	440.92 (2) (a) of the statutes is renumbered 440.922 (1) (a).
-2856.11	440.92 (2) (am) of the statutes is renumbered 440.922 (2).
-2856.12	440.92 (2) (b) of the statutes is renumbered 440.922 (1) (b).
-2856.13	440.92 (2) (c) of the statutes is renumbered 440.922 (3) and amended to read:
-2856.14	440.92 (2) (cm) of the statutes is renumbered 440.922 (4).
2856.15	440.92 (2) (d) of the statutes is renumbered 440.922 (5) (a).
-2856.16	440.92 (2) (e) of the statutes is renumbered 440.922 (5) (b).
-2856.17	440.92 (2) (f) of the statutes is renumbered 440.922 (5) (c) and amended to read:
-2856.18	440.92 (2) (g) of the statutes is renumbered 440.922 (6).
-2856.19	440.92 (2) (h) of the statutes is renumbered 440.922 (10).
-2856.20	440.92 (2) (i) of the statutes is renumbered 440.922 (7) and amended to read:

- 2856.21 440.92 (2) (j) of the statutes is renumbered 440.922 (8) and amended to read:
- 2856.22 440.92 (2) (k) of the statutes is renumbered 440.922 (9) and amended to read:
- 2856.23 440.92 (4) (a) (title) and (am) (title) of the statutes are created to read:
- 2856.24 440.92 (4) (b) (title) of the statutes is created to read:
- 2856.25 440.92 (5) of the statutes is renumbered 440.924 and amended to read:
- 2856.26 440.92 (6) (title) of the statutes is renumbered 440.926 (title) and amended to read:
- 2856.27 440.92 (6) (a) of the statutes is renumbered 440.926 (1) (a) and amended to read:
- 2856.28 440.92 (6) (b) and (c) of the statutes are renumbered 440.926 (1) (b) and (c).
- 2856.29 440.92 (6) (d) of the statutes is renumbered 440.926 (2) (c) and amended to read:
- 2856.30 440.92 (6) (e) of the statutes is renumbered 440.926 (1) (d) and amended to read:
- 2856.31 440.92 (6) (f) of the statutes is renumbered 440.926 (1) (e).
- 2856.32 440.92 (6) (g) of the statutes is renumbered 440.926 (2) (a), and 440.926 (2) (a) 1. and 2., as renumbered, are amended to read:
- 2856.33 440.92 (6) (h) of the statutes is renumbered 440.926 (2) (b) and amended to read:
- 2856.34 440.92 (6) (i) of the statutes is renumbered 440.926 (3) (a) and amended to read:
- 2856.35 440.92 (6) (j) of the statutes is renumbered 440.926 (4) and amended to read:
- 2856.36 440.92 (6) (k) of the statutes is renumbered 440.926 (3) (b) and amended to read:
- 2856.37 440.92 (7) of the statutes is renumbered 440.927 and amended to read:
- 2856.38 440.92 (9) (title) of the statutes is repealed.
- 2856.39 440.92 (9) (a) of the statutes is renumbered 440.92 (4) (am) 1. and amended to read:
- 2856.40 440.92 (9) (b) of the statutes is renumbered 440.92 (4) (am) 2., and 440.92 (4) (am) 2. (intro.) and c., as renumbered, are amended to read:
- 2856.41 440.92 (9) (c) of the statutes is renumbered 440.92 (4) (am) 3. and amended to read:
- 2856.42 440.92 (9) (d) of the statutes is renumbered 440.92 (4) (am) 4. and amended to read:



- 2856.43 440.92 (9) (e) of the statutes is renumbered 440.92 (4) (am) 5. and amended to read:
- 2856.44 440.92 (9) (f) of the statutes is renumbered 440.92 (4) (am) 6. and amended to read:
- 2856.45 440.92 (10) of the statutes is renumbered 440.928 and amended to read:
- 2856.46 440.922 (1) (title), (2) (title), (4) (title), (5) (title), (6) (title) and (10) (title) of the statutes are created to read:
- 2856.47 440.926 (1) (title), (2) (title) and (3) (title) of the statutes are created to read:
- 2856.48 440.95 (4) (c) of the statutes is amended to read:
- 2856.49 440.95 (4) (d) of the statutes is amended to read:
- 2856.50 440.95 (5) of the statutes is amended to read:
- 2818.1 443.10 (2) (b) of the statutes is amended to read:
- 2818.2 443.10 (2) (e) of the statutes is repealed.
- 2818.3 453.06 (2) of the statutes is repealed.
- 2818.4 453.06 (4) of the statutes is amended to read:
- 2818.5 455.06 of the statutes is amended to read:

## Grant, Peter

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**Sent:** Thursday, September 20, 2001 2:09 PM  
**To:** Grant, Peter  
**Subject:** law revision--DPI and DRL

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LRB 2821/p1 ✓  
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LRB 2833/p1 ✓  
LRB 2838/p1 ✓  
LRB 2856/p1 ✓

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rachel.letzing@legis.state.wi.us



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-4184/P1

MDK:l.:ch

D-NOTE

all

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

by  
F...  
11/9

Suppress atty. numbers

Gen. Cat

1 AN ACT *to repeal* 440.92 (9) (title), 443.10 (2) (e) and 453.06 (2); *to renumber*  
2 440.92 (2) (title), 440.92 (2) (a), 440.92 (2) (am), 440.92 (2) (b), 440.92 (2) (cm),  
3 440.92 (2) (d), 440.92 (2) (e), 440.92 (2) (g), 440.92 (2) (h), 440.92 (6) (b) and (c)  
4 and 440.92 (6) (f); *to renumber and amend* 440.042 (1), 440.042 (2), 440.92  
5 (2) (c), 440.92 (2) (f), 440.92 (2) (i), 440.92 (2) (j), 440.92 (2) (k), 440.92 (5), 440.92  
6 (6) (title), 440.92 (6) (a), 440.92 (6) (d), 440.92 (6) (e), 440.92 (6) (g), 440.92 (6)  
7 (h), 440.92 (6) (i), 440.92 (6) (j), 440.92 (6) (k), 440.92 (7), 440.92 (9) (a), 440.92  
8 (9) (b), 440.92 (9) (c), 440.92 (9) (d), 440.92 (9) (e), 440.92 (9) (f) and 440.92 (10);  
9 *to amend* 15.01 (7), 15.08 (5) (c), 15.085 (5) (c), 157.12 (2) (b), 157.19 (2) (c),  
10 157.19 (5) (a), 157.62 (6), 227.01 (6), 227.485 (3), 227.485 (5), 423.102, 440.01  
11 (1) (d), 440.26 (5) (b), 440.92 (1) (a), 440.95 (4) (c), 440.95 (4) (d), 440.95 (5),  
12 443.10 (2) (b), 453.06 (4) and 455.06; and *to create* 440.92 (4) (a) (title) and (am)  
13 (title), 440.92 (4) (b) (title), 440.922 (1) (title), (2) (title), (4) (title), (5) (title), (6)  
14 (title) and (10) (title) and 440.926 (1) (title), (2) (title) and (3) (title) of the  
15 statutes; **relating to:** eliminating redundancy in statutes pertaining to license

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renewal requirements ~~(suggested as remedial legislation by the department of regulation and licensing)~~ limiting a credential issued by an examining board <sup>keep</sup> ~~(suggested as remedial legislation by the department of regulation and licensing)~~ use of the term "credential" in the statutes pertaining to the department of regulation and licensing ~~(suggested as remedial legislation by the department of regulation and licensing)~~ changing the definition of "licensing" as it relates to administrative procedure ~~(suggested as remedial legislation by the department of regulation and licensing)~~ the award of costs in a contested administrative case ~~(suggested as remedial legislation by the department of regulation and licensing)~~ persons exempt from regulation as private detectives or private security personnel ~~(suggested as remedial legislation by the department of regulation and licensing)~~ renumbering and creating statutory titles for provisions pertaining to immunity from liability for testimony to the department of regulation and licensing and attached boards, advisory committees to the department of regulation and licensing and attached boards, and cemetery preneed sellers ~~(suggested as remedial legislation by the department of regulation and licensing)~~.

and

**Analysis by the Legislative Reference Bureau**

~~\*\*\* ANALYSIS FROM 2818/P1 \*\*\*~~

1. This bill eliminates redundancy in the statutes pertaining to license renewal requirements for psychologists, veterinarians, veterinary technicians, architects, landscape architects, and professional engineers.

The ~~\*\*\* ANALYSIS FROM 2821/P1 \*\*\*~~ The

2. Current law authorizes examining boards to limit a credential issued by the examining board by imposing conditions and requirements upon the holder of the credential and restricting the scope of the holder's practice. This bill allows the board to impose conditions or requirements on the holder without restricting the scope of the holder's practice, and vice versa.

~~\*\*\* ANALYSIS FROM 2823/P1 \*\*\*~~

(A) This bill makes the following changes to laws regarding the department of regulation and licensing (DRL) and boards in DRL:

<sup>The</sup> 3. ~~This~~ bill updates the statutes by substituting <sup>DRLA</sup> the term "credential" for "license, permit, or certificate" in the laws relating to ~~the~~ department of regulation and licensing.

~~\*\*\* ANALYSIS FROM -2833/P1 \*\*\*~~ <sup>those laws</sup>  
 1. Under current law, the definition of "licensing," used in ~~the chapter dealing with administrative procedures~~ means an agency process relating to the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license. ~~This~~ bill adds "limitation" to the list of processes that are involved in licensing. <sup>The</sup>

~~\*\*\* ANALYSIS FROM -2834/P1 \*\*\*~~  
 2. Under current law, if a small business, a small nonprofit corporation, or an individual is a prevailing party in a contested case administrative hearing, that prevailing party may submit a motion for costs. If that motion is submitted, the hearing examiner must award the prevailing party the costs incurred in connection with the contested case, unless the hearing examiner determines that the state agency that was the losing party was substantially justified in taking its position or that special circumstances make the award unjust. ~~This~~ bill clarifies some of the procedural language regarding the award of costs. <sup>The</sup>

~~\*\*\* ANALYSIS FROM -2838/P1 \*\*\*~~ <sup>The</sup>  
 4. Current law provides that the licensing requirements for private detectives, private detective agencies, and private security personnel do not apply to any person employed, directly or indirectly, by the state or by a municipality. ~~This~~ bill eliminates the phrase "directly or indirectly."

~~\*\*\* ANALYSIS FROM -2856/P1 \*\*\*~~ <sup>DRL,</sup>  
 5. <sup>The</sup> This bill renumbers and creates statutory titles for provisions under current law pertaining to immunity from liability for testimony to ~~the department of regulation and licensing (DORL) and attached boards, advisory committees to DORL and attached boards~~ and the regulation of cemetery preneed sellers. <sup>and</sup>

For further information, see the NOTES provided by the law revision committee of the joint legislative council. <sup>in DRL</sup>

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

LAW REVISION COMMITTEE PREFATORY NOTE: [This bill is a remedial legislation proposal, requested by the department of regulation and licensing and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats.] After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

- 1      **\*-2823/P1.1\* SECTION 1.** 15.01 (7) of the statutes is amended to read:
- 2      15.01 (7) "Examining board" means a part-time body which that sets
- 3      standards of professional competence and conduct for the profession under its

(9) The bill also makes the following changes to the laws regarding administrative procedure:

1 supervision, prepares, conducts, and grades the examinations of prospective new  
2 practitioners, grants licenses credentials, investigates complaints of alleged  
3 unprofessional conduct, and performs other functions assigned to it by law.  
4 "Examining board" includes the board of nursing.

5 \***-2823/P1.2**\* SECTION 2. 15.08 (5) (c) of the statutes is amended to read:

6 15.08 (5) (c) May limit, suspend or revoke, or reprimand the holder of, any  
7 ~~license, permit or certificate~~ credential granted by the examining board.

8 \***-2823/P1.3**\* SECTION 3. 15.085 (5) (c) of the statutes is amended to read:

9 15.085 (5) (c) May limit, suspend or revoke, or reprimand the holder of, any  
10 ~~license, permit or certificate~~ credential granted by the affiliated credentialing board.

11 \***-2856/P1.1**\* SECTION 4. 157.12 (2) (b) of the statutes is amended to read:

12 157.12 (2) (b) The department shall supervise construction of any public  
13 mausoleum and conversion of any building to a public mausoleum. Within 30 days  
14 after receiving written notice from the cemetery authority that the construction or  
15 conversion has been completed, the department shall inspect the public mausoleum  
16 and provide the cemetery authority with a written certification as to whether the  
17 construction or conversion complies with approved plans. If the department  
18 determines that, except for certain minor defects, the construction or conversion  
19 complies with the approved plans, the department may provide the cemetery  
20 authority with a written temporary certification of compliance that is contingent on  
21 the correction of those minor defects. A temporary certification is valid for a period  
22 designated by the department, not to exceed 6 months. No person may sell a  
23 mausoleum space, except an undeveloped space that is sold in accordance with ~~s. ss.~~  
24 440.92 and 440.922, or bury human remains in a public mausoleum unless a care  
25 fund has been established for the mausoleum under sub. (3) and the department has

1 provided the cemetery authority with a certification or a temporary certification  
2 under this paragraph. If a cemetery authority that has been provided with a  
3 temporary certification notifies the department in writing before the date on which  
4 the temporary certification expires that the defects in the construction or conversion  
5 of the public mausoleum have been corrected, the department shall, within 30 days  
6 after receiving the notice, reinspect the public mausoleum and provide the cemetery  
7 authority with a written certification as to whether the construction or conversion  
8 complies with the approved plans. If a cemetery authority that has been provided  
9 with a temporary certification does not receive a written certification from the  
10 department before the date on which the temporary certification expires that the  
11 construction or conversion complies with the approved plans, then, beginning on the  
12 date on which the certification expires, no person may sell a mausoleum space, except  
13 an undeveloped space that is sold in accordance with ~~s.~~ ss. 440.92 and 440.922, or  
14 bury human remains in the public mausoleum until the defects are corrected and the  
15 department subsequently inspects the public mausoleum and provides the cemetery  
16 authority with a certification that the construction or conversion complies with the  
17 approved plans. The department may charge a reasonable fee to the cemetery  
18 authority for each inspection and certification provided under this paragraph if the  
19 inspection and certification are provided within the applicable 30-day period  
20 prescribed under this paragraph.

21 **\*-2856/P1.2\* SECTION 5.** 157.19 (2) (c) of the statutes is amended to read:

22 157.19 (2) (c) Upon request of the financial institution, the preneed seller, as  
23 defined in s. 440.90 (8), shall furnish the financial institution with a copy of the  
24 preneed sales contract. Except as provided in ~~s. 440.92 (2) (e), (f) and (j) and (5) ss.~~  
25 440.922 (3), (5) (c), and (8) and 440.924, preneed trust funds, and any interest or

1 dividends that have accumulated on the preneed trust funds, may not be withdrawn  
2 until all obligations under the preneed sales contract have been fulfilled. The  
3 financial institution is not responsible for the fulfillment of any part of the preneed  
4 sales contract, except that the financial institution shall release the preneed trust  
5 funds, and any interest or dividends that have accumulated on the preneed trust  
6 funds, as provided by the terms of the preneed sales contract. The trustee of a  
7 preneed trust fund may not be changed without the department's written approval.  
8 If the trustee or account number of a preneed trust fund is changed, the cemetery  
9 authority shall notify the department in writing within 30 days after the change.

10 **\*-2856/P1.3\* SECTION 6.** 157.19 (5) (a) of the statutes is amended to read:

11 157.19 (5) (a) This section does not apply to care funds under s. 157.11 (9g) that  
12 are deposited with a city or county as provided under s. 157.11 (9g) (a), to care funds  
13 of a cemetery for which a certification under s. 157.63 is effective, to preneed trust  
14 funds of a cemetery for which a certification under s. 440.92 ~~(9)~~ (4) (am) is effective,  
15 or to care funds or preneed trust funds of a cemetery authority that is not required  
16 to be registered under s. 440.91 (1) and that is not organized or conducted for  
17 pecuniary profit.

18 **\*-2856/P1.4\* SECTION 7.** 157.62 (6) of the statutes is amended to read:

19 157.62 (6) AUDIT. Except as provided in ss. 157.625, 157.63 (5) and 440.92 ~~(9)~~  
20 ~~(e)~~ (4) (am) 5., the department may audit, at reasonable times and frequency, the  
21 records, trust funds and accounts of any cemetery authority, including records, trust  
22 funds and accounts pertaining to services provided by a cemetery authority which  
23 are not otherwise subject to the requirements under this chapter. The department  
24 may conduct audits under this subsection on a random basis, and shall conduct all



1 audits under this subsection without providing prior notice to the cemetery  
2 authority.

3 **\*-2833/P1.1\* SECTION 8.** 227.01 (6) of the statutes is amended to read:

4 227.01 (6) "Licensing" means an agency process relating to the granting,  
5 denial, renewal, revocation, suspension, annulment, withdrawal, limitation, or  
6 amendment of a license.

7 ~~**\*-2834/P1.1\* SECTION 9.** 227.485 (3) of the statutes is amended to read:~~

8 ~~227.485 (3) In any contested case in which an individual, a small nonprofit  
9 corporation or a small business is the prevailing party and submits a motion for costs  
10 under this section, the hearing examiner shall consider the motion, issue a proposed  
11 decision on costs, and award the prevailing party the costs incurred in connection  
12 with the contested case, unless the hearing examiner finds that the state agency  
13 which is the losing party was substantially justified in taking its position or that  
14 special circumstances exist that would make the award unjust.~~

15 **\*-2834/P1.2\* SECTION 10.** 227.485 (5) of the statutes is amended to read:

16 227.485 (5) If the hearing examiner awards costs under sub. (3), he or she shall  
17 determine the costs under this subsection, except as modified under sub. (4). The  
18 decision on the ~~merits of the case~~ motion for costs shall be placed in a proposed  
19 decision and submitted under ss. 227.47 and 227.48. The prevailing party shall  
20 submit, within 30 days after service of the proposed decision, to the hearing examiner  
21 and to the state agency which is the losing party an itemized application for fees and  
22 other expenses, including an itemized statement from any attorney or expert witness  
23 representing or appearing on behalf of the party stating the actual time expended  
24 and the rate at which fees and other expenses were computed. The state agency  
25 which is the losing party has 15 working days from the date of receipt of the

1 application to respond in writing to the hearing examiner. The hearing examiner  
2 shall determine the amount of costs using the criteria specified in s. 814.245 (5) and  
3 include an order for payment of costs in the final decision.

4 **\*-2856/P1.5\* SECTION 11.** 423.102 of the statutes is amended to read:

5 **423.102 Scope.** This chapter applies to all consumer transactions, except that  
6 subch. II does not apply to cemetery preneed sales under ~~s. 440.92~~ subch. VIII of ch.  
7 440.

8 **\*-2821/P1.1\* SECTION 12.** 440.01 (1) (d) of the statutes is amended to read:

9 440.01 (1) (d) "Limit", when used in reference to limiting a credential, means  
10 to impose conditions ~~and~~ or requirements upon the holder of the credential, ~~and~~ or  
11 to restrict the scope of the holder's practice.

12 **\*-2856/P1.6\* SECTION 13.** 440.042 (1) of the statutes is renumbered 440.042

13 and amended to read:

14 **440.042 Advisory committees.** The secretary may appoint persons or  
15 advisory committees to advise the department and the boards, examining boards and  
16 affiliated credentialing boards in the department on matters relating to the  
17 regulation of credential holders. The secretary shall appoint an advisory committee  
18 to advise the department on matters relating to carrying out the duties specified in  
19 s. 440.982 and making investigations, conducting hearings and taking disciplinary  
20 action under s. 440.986. A person or an advisory committee member appointed under  
21 this ~~subsection~~ section shall serve without compensation, but may be reimbursed for  
22 his or her actual and necessary expenses incurred in the performance of his or her  
23 duties.

24 **\*-2856/P1.7\* SECTION 14.** 440.042 (2) of the statutes is renumbered 440.043

25 and amended to read:

1           **440.043 Immunity from liability.** Any person who in good faith testifies  
2 before the department or any examining board, affiliated credentialing board or  
3 board in the department or otherwise provides the department or any examining  
4 board, affiliated credentialing board or board in the department with advice or  
5 information on a matter relating to the regulation of a person holding a credential  
6 is immune from civil liability for his or her acts or omissions in testifying or otherwise  
7 providing such advice or information. The good faith of any person specified in this  
8 ~~subsection~~ section shall be presumed in any civil action and an allegation that such  
9 a person has not acted in good faith must be proven by clear and convincing evidence.

10           **\*-2838/P1.1\* SECTION 15.** 440.26 (5) (b) of the statutes is amended to read:

11           440.26 (5) (b) The license requirements of this section do not apply to any  
12 person employed ~~directly or indirectly~~ by the state or by a municipality, as defined  
13 in s. 345.05 (1) (c), or to any employee of a railroad company under s. 192.47, or to  
14 any employee of a commercial establishment, while the person is acting within the  
15 scope of his or her employment and whether or not he or she is on the employer's  
16 premises.

17           **\*-2856/P1.8\* SECTION 16.** 440.92 (1) (a) of the statutes is amended to read:

18           440.92 (1) (a) Except as provided in ~~subs. sub. (4), (9) (a) and (10)~~ s. 440.928,  
19 every individual who sells or solicits the sale of cemetery merchandise or an  
20 undeveloped space under a preneed sales contract and, if the individual is employed  
21 by or acting as an agent for a cemetery authority or any other person, that cemetery  
22 authority or other person is required to be registered under this subsection.

23           **\*-2856/P1.9\* SECTION 17.** 440.92 (2) (title) of the statutes is renumbered

24 440.922 (title).

1           **\*-2856/P1.10\* SECTION 18.** 440.92 (2) (a) of the statutes is renumbered  
2 440.922 (1) (a).

3           **\*-2856/P1.11\* SECTION 19.** 440.92 (2) (am) of the statutes is renumbered  
4 440.922 (2).

5           **\*-2856/P1.12\* SECTION 20.** 440.92 (2) (b) of the statutes is renumbered  
6 440.922 (1) (b).

7           **\*-2856/P1.13\* SECTION 21.** 440.92 (2) (c) of the statutes is renumbered 440.922  
8 (3) and amended to read:

9           440.922 (3) VOIDING OF CONTRACTS. Except as provided in ~~par. (cm)~~ sub. (4), a  
10 preneed sales contract shall provide that if the purchaser voids the preneed sales  
11 contract at any time within 10 days after the date of the initial payment the preneed  
12 seller shall, within 30 days after the date on which the preneed sales contract is  
13 voided, refund all money paid by the purchaser for cemetery merchandise that has  
14 not been supplied or delivered and for the mausoleum space.

15           **\*-2856/P1.14\* SECTION 22.** 440.92 (2) (cm) of the statutes is renumbered  
16 440.922 (4).

17           **\*-2856/P1.15\* SECTION 23.** 440.92 (2) (d) of the statutes is renumbered  
18 440.922 (5) (a).

19           **\*-2856/P1.16\* SECTION 24.** 440.92 (2) (e) of the statutes is renumbered  
20 440.922 (5) (b).

21           **\*-2856/P1.17\* SECTION 25.** 440.92 (2) (f) of the statutes is renumbered 440.922  
22 (5) (c) and amended to read:

23           440.922 (5) (c) If a preneed sales contract is voided under par. (e) (b), the  
24 preneed seller shall, within 30 days after the date on which the preneed sales

1 contract is voided, refund all money paid by the purchaser, together with interest  
2 calculated at the legal rate of interest as provided under s. 138.04.

3 **\*-2856/P1.18\* SECTION 26.** 440.92 (2) (g) of the statutes is renumbered  
4 440.922 (6).

5 **\*-2856/P1.19\* SECTION 27.** 440.92 (2) (h) of the statutes is renumbered  
6 440.922 (10).

7 **\*-2856/P1.20\* SECTION 28.** 440.92 (2) (i) of the statutes is renumbered 440.922  
8 (7) and amended to read:

9 440.922 (7) TRUSTING REQUIREMENTS. If a preneed sales contract includes  
10 provisions for the sale of cemetery merchandise or an undeveloped space that is  
11 subject to the trusting requirements under sub. s. 440.92 (3) (a) and (b) and for the  
12 sale of other goods or services that are not subject to the trusting requirements under  
13 sub. s. 440.92 (3) (a) and (b), the sale price of the goods or services that are not subject  
14 to the trusting requirements may not be inflated for the purpose of allocating a lower  
15 sale price to the cemetery merchandise or undeveloped space that is subject to the  
16 trusting requirements.

17 **\*-2856/P1.21\* SECTION 29.** 440.92 (2) (j) of the statutes is renumbered 440.922  
18 (8) and amended to read:

19 440.922 (8) CONTRACT REQUIREMENTS. A preneed sales contract shall be in  
20 writing. The preneed seller shall provide the purchaser with a copy of the preneed  
21 sales contract at the time that the preneed sales contract is entered into. A provision  
22 in a written preneed sales contract that limits the terms of the transaction to those  
23 included in the written preneed sales contract and that disclaims any oral  
24 agreements pertaining to the transaction creates a rebuttable presumption that no  
25 oral preneed sales contract pertaining to the transaction exists. A preneed sales

1 contract that is not in writing may not be voided by the preneed seller, but may be  
2 voided by the purchaser at any time before all of the cemetery merchandise  
3 purchased has been delivered, before the plans for constructing the mausoleum have  
4 been approved under s. 157.12 (2) (a) or, if the mausoleum is a public mausoleum,  
5 before the construction of the mausoleum has been certified under s. 157.12 (2) (b).  
6 If a preneed sales contract is voided under this ~~paragraph~~ subsection, the preneed  
7 seller shall, within 30 days after the date on which the preneed sales contract is  
8 voided, refund all money paid by the purchaser, together with interest calculated at  
9 the legal rate of interest as provided under s. 138.04.

10 \*~~2856/P1.22~~\* SECTION 30. 440.92 (2) (k) of the statutes is renumbered  
11 440.922 (9) and amended to read:

12 440.922 (9) NOTICE OF RIGHTS. A preneed sales contract shall include the  
13 following language in not less than 10-point boldface type: “SECTION 440.92 (2)  
14 440.922 OF THE WISCONSIN STATUTES SPECIFIES THE RIGHTS OF THE  
15 PURCHASER UNDER THIS CONTRACT. DEPENDING ON THE  
16 CIRCUMSTANCES, THESE MAY INCLUDE THE RIGHT TO VOID THE  
17 CONTRACT AND RECEIVE A REFUND OR THE RIGHT TO ASSIGN AN  
18 INTEREST IN THE CONTRACT TO ANOTHER PERSON.”

19 \*~~2856/P1.23~~\* SECTION 31. 440.92 (4) (a) (title) and (am) (title) of the statutes  
20 are created to read:

21 440.92 (4) (a) (title) *Trusts; delivery guarantees.*

22 (am) (title) *Cemetery affiliated with religious society.*

23 \*~~2856/P1.24~~\* SECTION 32. 440.92 (4) (b) (title) of the statutes is created to  
24 read:

25 440.92 (4) (b) (title) *Refunds.*

1           \***-2856/P1.25\*** **SECTION 33.** 440.92 (5) of the statutes is renumbered 440.924  
2 and amended to read:

3           **440.924 Use of preneed trust funds to cover costs of construction or**  
4 **partial performance.** (1) Before the construction of a mausoleum for which a  
5 preneed trust fund has been established is certified under s. 157.12 (2) (b), the  
6 trustee of the preneed trust fund shall, upon receipt of a written request for the  
7 release of a specified amount of the funds from the preneed seller and the person who  
8 is constructing the mausoleum, release the specified amount of the funds, but only  
9 if the request is accompanied by a sworn statement, signed by the preneed seller and  
10 the person who is constructing the mausoleum, certifying that the specified amount  
11 does not exceed the amount charged to the preneed seller by the person who is  
12 constructing the mausoleum for labor that has actually been performed and  
13 materials that have actually been used in the construction of the mausoleum, and  
14 does not include any cost for which preneed trust funds have been previously  
15 released under this ~~paragraph~~ subsection.

16           (2) Before all of the terms of a preneed sales contract for the sale of cemetery  
17 merchandise are fulfilled, the trustee of the preneed trust fund shall, upon receipt  
18 of a written request for the release of a specified amount of the funds from the  
19 preneed seller, release the specified amount of the funds, but only if the request is  
20 accompanied by a sworn statement, signed by the preneed seller, certifying that the  
21 specified amount does not exceed the actual cost to the preneed seller for any  
22 cemetery merchandise that has actually been supplied or delivered and for any  
23 cemetery services that have actually been performed, and does not include any cost  
24 for which preneed trust funds have been previously released under this ~~paragraph~~  
25 subsection.

1           \***-2856/P1.26\*** SECTION 34. 440.92 (6) (title) of the statutes is renumbered  
2 440.926 (title) and amended to read:

3           **440.926** (title) **Reporting; Preneed seller reporting and record keeping;**  
4 **audits.**

5           \***-2856/P1.27\*** SECTION 35. 440.92 (6) (a) of the statutes is renumbered  
6 440.926 (1) (a) and amended to read:

7           440.926 (1) (a) Every preneed seller registered under ~~sub. s.~~ 440.92 (1) shall  
8 file an annual report with the department. The report shall be made on a form  
9 prescribed and furnished by the department. The report shall be made on a  
10 calendar-year basis unless the department, by rule, provides for other reporting  
11 periods. The report is due on or before the 60th day after the last day of the reporting  
12 period.

13           \***-2856/P1.28\*** SECTION 36. 440.92 (6) (b) and (c) of the statutes are  
14 renumbered 440.926 (1) (b) and (c).

15           \***-2856/P1.29\*** SECTION 37. 440.92 (6) (d) of the statutes is renumbered  
16 440.926 (2) (c) and amended to read:

17           440.926 (2) (c) All records described under ~~para. sub. (1)~~ (b) 2. and (c) and  
18 maintained by the department are confidential and are not available for inspection  
19 or copying under s. 19.35 (1). This paragraph does not apply to any information  
20 regarding the name, address, or employer of or financial information related to an  
21 individual that is requested under s. 49.22 (2m) by the department of workforce  
22 development or a county child support agency under s. 59.53 (5).

23           \***-2856/P1.30\*** SECTION 38. 440.92 (6) (e) of the statutes is renumbered  
24 440.926 (1) (d) and amended to read:



1           440.926 (1) (d) The department shall review each report filed under par. (a) to  
2 determine whether the preneed seller is complying with this section subchapter.

3           \***-2856/P1.31\*** SECTION 39. 440.92 (6) (f) of the statutes is renumbered 440.926  
4 (1) (e).

5           \***-2856/P1.32\*** SECTION 40. 440.92 (6) (g) of the statutes is renumbered  
6 440.926 (2) (a), and 440.926 (2) (a) 1. and 2., as renumbered, are amended to read:

7           440.926 (2) (a) 1. The records needed to prepare the reports required under ~~par.~~  
8 sub. (1) (a).

9           2. Records that show, for each deposit in a trust fund or account specified in  
10 ~~par.~~ sub. (1) (b) 2. and (c), the name of the purchaser or beneficiary of the preneed  
11 sales contract relating to the deposit and the item purchased.

12           \***-2856/P1.33\*** SECTION 41. 440.92 (6) (h) of the statutes is renumbered  
13 440.926 (2) (b) and amended to read:

14           440.926 (2) (b) The records under ~~par.~~ sub. (1) (b) 1. shall be permanently  
15 maintained by the preneed seller. The records under ~~par.~~ sub. (1) (b) 2. shall be  
16 maintained for not less than 3 years after all of the obligations of the preneed sales  
17 contract have been fulfilled. The department may promulgate rules to establish  
18 longer time periods for maintaining records under this paragraph.

19           \***-2856/P1.34\*** SECTION 42. 440.92 (6) (i) of the statutes is renumbered 440.926  
20 (3) (a) and amended to read:

21           440.926 (3) (a) The department may promulgate rules requiring preneed  
22 sellers registered under ~~sub. s.~~ 440.92 (1) to maintain other records and establishing  
23 minimum time periods for the maintenance of those records.

24           \***-2856/P1.35\*** SECTION 43. 440.92 (6) (j) of the statutes is renumbered 440.926  
25 (4) and amended to read:

1           440.926 (4) AUDITS. The department may audit, at reasonable times and  
2 frequency, the records, trust funds, and accounts of any preneed seller registered  
3 under sub. s. 440.92 (1), including records, trust funds, and accounts pertaining to  
4 services provided by a preneed seller which are not otherwise subject to the  
5 requirements under this ~~section~~ subchapter. The department may conduct audits  
6 under this ~~paragraph~~ subsection on a random basis, and shall conduct all audits  
7 under this ~~paragraph~~ subsection without providing prior notice to the preneed seller.

8           \***-2856/P1.36\*** SECTION 44. 440.92 (6) (k) of the statutes is renumbered  
9 440.926 (3) (b) and amended to read:

10           440.926 (3) (b) The department may promulgate rules establishing a filing fee  
11 to accompany the report required under ~~par. sub. (1)~~ (a). The filing fee shall be based  
12 on the approximate cost of regulating preneed sellers.

13           \***-2856/P1.37\*** SECTION 45. 440.92 (7) of the statutes is renumbered 440.927  
14 and amended to read:

15           **440.927 Approval of warehouses.** No person may own or operate a  
16 warehouse unless the warehouse is approved by the department. Upon application,  
17 the department shall approve a warehouse that is located in this state if the person  
18 who operates the warehouse is licensed as a public warehouse keeper by the  
19 department of agriculture, trade and consumer protection under ch. 99, but may not  
20 approve a warehouse that is located in this state unless the person is so licensed. The  
21 department shall promulgate rules establishing the requirements for approval of  
22 warehouses that are located outside this state. The rules shall require warehouses  
23 that are located outside this state to file with the department a bond furnished by  
24 a surety company authorized to do business in this state in an amount that is  
25 sufficient to guarantee the delivery of cemetery merchandise to purchasers under

1 preneed sales contracts. The department shall compile and keep a current list of the  
2 names and addresses of all warehouses approved under this ~~subsection~~ section and  
3 shall make the list available for public inspection during the times specified in s.  
4 230.35 (4) (f).

5 **\*-2856/P1.38\* SECTION 46.** 440.92 (9) (title) of the statutes is repealed.

6 **\*-2856/P1.39\* SECTION 47.** 440.92 (9) (a) of the statutes is renumbered 440.92  
7 (4) (am) 1. and amended to read:

8 440.92 (4) (am) 1. If the cemetery authority of a cemetery that is affiliated with  
9 a religious society organized under ch. 187 or that religious society files an annual  
10 certification with the department as provided in this ~~subsection~~ paragraph, neither  
11 the cemetery authority nor any employee of the cemetery is required to be registered  
12 as a cemetery preneed seller under sub. (1) during the period for which the  
13 certification is effective.

14 **\*-2856/P1.40\* SECTION 48.** 440.92 (9) (b) of the statutes is renumbered 440.92  
15 (4) (am) 2., and 440.92 (4) (am) 2. (intro.) and c., as renumbered, are amended to read:

16 440.92 (4) (am) 2. (intro.) A certification under this ~~subsection~~ paragraph shall  
17 be made on a form prescribed and furnished by the department and include all of the  
18 following:

19 c. A notarized statement of a person who is legally authorized to act on behalf  
20 of the religious society under this ~~subsection~~ paragraph that, during the 12-month  
21 period immediately preceding the date on which the certification is filed with the  
22 department, each employee specified under subd. 2. b. and the cemetery authority  
23 have either fully complied or have substantially complied with ~~subs. (2), sub. (3) (a)~~  
24 and (b) and ~~(5)~~ ss. 440.922 and 44.924.

1           \***-2856/P1.41\*** SECTION 49. 440.92 (9) (c) of the statutes is renumbered 440.92  
2 (4) (am) 3. and amended to read:

3           440.92 (4) (am) 3. If the statement under ~~par. (b) 3.~~ subd. 2. c. includes a  
4 statement of substantial compliance, the statement of substantial compliance must  
5 also specify those instances when the employee or cemetery authority did not fully  
6 comply with sub. ~~(2),~~ (3) (a) or (b) or ~~(5) s. 440.922 or 440.924.~~

7           \***-2856/P1.42\*** SECTION 50. 440.92 (9) (d) of the statutes is renumbered 440.92  
8 (4) (am) 4. and amended to read:

9           440.92 (4) (am) 4. A certification under this ~~subsection~~ paragraph is effective  
10 for the 12-month period immediately following the date on which the certification  
11 is filed with the department.

12           \***-2856/P1.43\*** SECTION 51. 440.92 (9) (e) of the statutes is renumbered 440.92  
13 (4) (am) 5. and amended to read:

14           440.92 (4) (am) 5. During the effective period specified under ~~par. (d)~~ subd. 4.,  
15 the department may not audit the preneed trust funds or any records or accounts  
16 relating to the preneed trust funds of the cemetery authority or any employee of the  
17 cemetery to which a certification under this ~~subsection~~ paragraph applies.

18           \***-2856/P1.44\*** SECTION 52. 440.92 (9) (f) of the statutes is renumbered 440.92  
19 (4) (am) 6. and amended to read:

20           440.92 (4) (am) 6. The religious society that is affiliated with a cemetery to  
21 which a certification under this ~~subsection~~ paragraph applies is liable for the  
22 damages of any person that result from the failure of any employee specified under  
23 ~~par. (b)~~ subd. 2. b. or the cemetery authority to fully comply with sub. ~~(2),~~ (3) (a) or  
24 (b) or ~~(5) s. 440.922 or 440.924~~ during the 12-month period for which such compliance  
25 has been certified under this ~~subsection~~ paragraph.

1           \***-2856/P1.45\*** SECTION 53. 440.92 (10) of the statutes is renumbered 440.928  
2 and amended to read:

3           **440.928 Exemptions; certain nonprofit cemeteries.** ~~This section does~~  
4 Sections 440.92 to 440.927 do not apply to a cemetery authority that is not required  
5 to be registered under s. 440.91 (1) and that is not organized or conducted for  
6 pecuniary profit.

7           \***-2856/P1.46\*** SECTION 54. 440.922 (1) (title), (2) (title), (4) (title), (5) (title),  
8 (6) (title) and (10) (title) of the statutes are created to read:

9           440.922 (1) (title) DELIVERY OF CEMETERY MERCHANDISE.

10          (2) (title) AFFIXTURE OF CEMETERY MERCHANDISE.

11          (4) (title) PHYSICAL ALTERATION OF CEMETERY MERCHANDISE.

12          (5) (title) UNDEVELOPED SPACE SALES.

13          (6) (title) INTEREST ASSIGNMENTS.

14          (10) (title) CONFLICTING PROVISIONS.

15          \***-2856/P1.47\*** SECTION 55. 440.926 (1) (title), (2) (title) and (3) (title) of the  
16 statutes are created to read:

17          440.926 (1) (title) REPORTS.

18          (2) (title) RECORDS.

19          (3) (title) RULES.

20          \***-2856/P1.48\*** SECTION 56. 440.95 (4) (c) of the statutes is amended to read:  
21 440.95 (4) (c) Fails to file a report or files an incomplete, false or misleading  
22 report under s. 440.92 ~~(6)~~ 440.926.

23          \***-2856/P1.49\*** SECTION 57. 440.95 (4) (d) of the statutes is amended to read:  
24 440.95 (4) (d) Files a false or misleading certification under s. 440.92 (9) (4)  
25 (am).



## Kunkel, Mark

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**From:** Letzing, Rachel  
**Sent:** Thursday, November 15, 2001 4:53 PM  
**To:** Kunkel, Mark  
**Subject:** Section Notes for LRB-4184/p1—Department of Regulation and Licensing



Section  
Notes.drl.doc

Hi Mark,

Here are the Section Notes for the DRL remedial draft. The Section Notes have been left out of a couple of bill drafts, so I just want to be sure these make it into the introduced bill. Thanks!

Rachel E. Letzing  
Legislative Council Staff  
(608) 266-3370  
rachel.letzing@legis.state.wi.us

## **Section Notes for LRB-4184/p1—Department of Regulation and Licensing**

1. Insert after Section 1: Sections 1, 2 and 3 of this bill substitute “credential” for “license, permit, or certificate” to make the terminology consistent with the terms used in other laws relating to the department of regulation and licensing.
2. Insert after Section 4: Sections 4, 5, 6 and 7 of this bill change statutory references to reflect the creation of titles for and the renumbering of s. 440.92, Stats., relating to regulation of cemetery preneed sellers. According to the department of regulation and licensing, the current statute is difficult to use due to its length and organization.
3. Insert after Section 8: Section 8 of this bill adds “limitation” to the definition of the licensing process in ch. 227, Stats. to be consistent with other laws relating to the department of regulation and licensing which include limitation as a licensing action.
4. Insert after Section 9: Section 9 of this bill specifies that if a prevailing party submits a motion for costs, the hearing examiner’s decision on the motion for costs must be included in a proposed decision.
5. Insert after Section 10: Section 10 of this bill changes statutory references to reflect the creation of titles for and the renumbering of s. 440.92, Stats., relating to regulation of cemetery preneed sellers. According to the department of regulation and licensing, the current statute is difficult to use due to its length and organization.
6. Insert after Section 11: Section 11 of this bill allows the department of regulation and licensing to impose conditions or requirements upon the holder of a credential or to restrict the scope of the holder’s practice. Currently, an order to limit a holder’s credential must include a provision that restricts the scope of the holder’s practice. According to the department of regulation and licensing, in some cases a restriction on a holder’s practice scope is not appropriate.
7. Insert after Section 12: Section 12 of this bill changes “subsection” to “section” to conform to the renumbering of s. 440.042, Stats., relating to advisory committees to the department of regulation and licensing.
8. Insert after Section 13: Section 13 of this bill changes “subsection” to “section” and creates a statutory title to conform to the renumbering of s. 440.042, Stats., pertaining to immunity from liability for testimony before the department of regulation and licensing or any examining board.
9. Insert after Section 14: Section 14 of this bill eliminates the phrase “directly or indirectly” from the exemption to the license requirement for private detectives, private detective agencies and private security personnel. According the department of



9 6  
regulation and licensing, the term "indirectly" is not defined, which causes difficulty in interpreting the law.

10. Insert after Section 15: Sections 15, 16 to 53, 54, 55, 56 and 57 reflect the creation of statutory titles for and the renumbering of s. 440.92, Stats., pertaining to the regulation of cemetery preneed sellers. According to the department of regulation and licensing, the current statute is difficult to use due to its length and organization.

11. Insert after Section 58: Sections 58 and 59 eliminate redundancy in the statutes regarding license renewal requirements for architects, landscape architects and professional engineers.

12. Insert after Section 60: Sections 60 and 61 eliminate redundancy in the statutes regarding renewal requirements for veterinarian licenses and veterinary technician certifications.

13. Insert after Section 62: Section 62 of this bill eliminates redundancy in the statutes regarding license renewal requirements for psychologists.

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

LRB-4184/P1ins

MDK: /:....  
kg

Rachel Letzing:

This draft combines the following: LRB-2818/P1<sup>✓</sup>, LRB-2821/P1<sup>✓</sup>, LRB-2823/P1<sup>✓</sup>,  
LRB-2833/P1<sup>✓</sup>, LRB-2834/P1<sup>✓</sup>, LRB-2838/P1<sup>✓</sup>, and LRB-2856/P1<sup>✓</sup>. However, SECTION 1  
of LRB-2834/P1 has been deleted.

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

LRB-4184/P1dn  
MDK:kgjf

November 7, 2001

Rachel Letzing:

This draft combines the following: LRB-2818/P1, LRB-2821/P1, LRB-2823/P1, LRB-2833/P1, LRB-2834/P1, LRB-2838/P1, and LRB-2856/P1. However, SECTION 1 of LRB-2834/P1 has been deleted.

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TODAY  
by 4:30pm  
only change is  
inclusion of NOTES

O-NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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11/11/02

1 AN ACT *to repeal* 440.92 (9) (title), 443.10 (2) (e) and 453.06 (2); *to renumber*  
2 440.92 (2) (title), 440.92 (2) (a), 440.92 (2) (am), 440.92 (2) (b), 440.92 (2) (cm),  
3 440.92 (2) (d), 440.92 (2) (e), 440.92 (2) (g), 440.92 (2) (h), 440.92 (6) (b) and (c)  
4 and 440.92 (6) (f); *to renumber and amend* 440.042 (1), 440.042 (2), 440.92  
5 (2) (c), 440.92 (2) (f), 440.92 (2) (i), 440.92 (2) (j), 440.92 (2) (k), 440.92 (5), 440.92  
6 (6) (title), 440.92 (6) (a), 440.92 (6) (d), 440.92 (6) (e), 440.92 (6) (g), 440.92 (6)  
7 (h), 440.92 (6) (i), 440.92 (6) (j), 440.92 (6) (k), 440.92 (7), 440.92 (9) (a), 440.92  
8 (9) (b), 440.92 (9) (c), 440.92 (9) (d), 440.92 (9) (e), 440.92 (9) (f) and 440.92 (10);  
9 *to amend* 15.01 (7), 15.08 (5) (e), 15.085 (5) (c), 157.12 (2) (b), 157.19 (2) (c),  
10 157.19 (5) (a), 157.62 (6), 227.01 (6), 227.485 (5), 423.102, 440.01 (1) (d), 440.26  
11 (5) (b), 440.92 (1) (a), 440.95 (4) (c), 440.95 (4) (d), 440.95 (5), 443.10 (2) (b),  
12 453.06 (4) and 455.06; and *to create* 440.92 (4) (a) (title) and (am) (title), 440.92  
13 (4) (b) (title), 440.922 (1) (title), (2) (title), (4) (title), (5) (title), (6) (title) and (10)  
14 (title) and 440.926 (1) (title), (2) (title) and (3) (title) of the statutes; **relating**  
15 **to:** eliminating redundancy in statutes pertaining to license renewal

1 requirements; limiting a credential issued by an examining board; use of the  
2 term “credential” in the statutes pertaining to the department of regulation and  
3 licensing; changing the definition of “licensing” as it relates to administrative  
4 procedure; the award of costs in a contested administrative case; persons  
5 exempt from regulation as private detectives or private security personnel; and  
6 renumbering and creating statutory titles for provisions pertaining to  
7 immunity from liability for testimony to the department of regulation and  
8 licensing and attached boards, advisory committees to the department of  
9 regulation and licensing and attached boards, and cemetery preneed sellers  
10 (suggested as remedial legislation by the department of regulation and  
11 licensing).

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***Analysis by the Legislative Reference Bureau***

This bill makes the following changes to laws regarding the department of regulation and licensing (DRL) and boards in DRL:

1. The bill eliminates redundancy in the statutes pertaining to license renewal requirements for psychologists, veterinarians, veterinary technicians, architects, landscape architects, and professional engineers.

2. Current law authorizes examining boards to limit a credential issued by the examining board by imposing conditions and requirements upon the holder of the credential and restricting the scope of the holder’s practice. The bill allows the board to impose conditions or requirements on the holder without restricting the scope of the holder’s practice, and vice versa.

3. The bill updates the statutes by substituting the term “credential” for “license, permit, or certificate” in the laws relating to DRL.

4. Current law provides that the licensing requirements for private detectives, private detective agencies, and private security personnel do not apply to any person employed, directly or indirectly, by the state or by a municipality. The bill eliminates the phrase “directly or indirectly.”

5. The bill renumbers and creates statutory titles for provisions under current law pertaining to immunity from liability for testimony to DRL, boards in DRL, and advisory committees, and the regulation of cemetery preneed sellers.

The bill also makes the following changes to the laws regarding administrative procedures:

1. Under current law, the definition of “licensing,” used in those laws, means an agency process relating to the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license. The bill adds “limitation” to the list of processes that are involved in licensing.

2. Under current law, if a small business, a small nonprofit corporation, or an individual is a prevailing party in a contested case administrative hearing, that prevailing party may submit a motion for costs. If that motion is submitted, the hearing examiner must award the prevailing party the costs incurred in connection with the contested case, unless the hearing examiner determines that the state agency that was the losing party was substantially justified in taking its position or that special circumstances make the award unjust. The bill clarifies some of the procedural language regarding the award of costs.

For further information, see the NOTES provided by the law revision committee of the joint legislative council.

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

LAW REVISION COMMITTEE PREFATORY NOTE: [This bill is a remedial legislation proposal, requested by the department of regulation and licensing and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats.] After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1           **SECTION 1.** 15.01 (7) of the statutes is amended to read:

2           15.01 (7) “Examining board” means a part-time body ~~which~~ that sets  
3 standards of professional competence and conduct for the profession under its  
4 supervision, prepares, conducts, and grades the examinations of prospective new  
5 practitioners, grants licenses credentials, investigates complaints of alleged  
6 unprofessional conduct, and performs other functions assigned to it by law.  
7 “Examining board” includes the board of nursing.

8           **SECTION 2.** 15.08 (5) (c) of the statutes is amended to read:

9           15.08 (5) (c) May limit, suspend or revoke, or reprimand the holder of, any  
10 license, ~~permit or certificate~~ credential granted by the examining board.

11           **SECTION 3.** 15.085 (5) (c) of the statutes is amended to read:

INSERT 3-7 ✓

1           15.085 (5) (c) May limit, suspend or revoke, or reprimand the holder of, any  
2 ~~license, permit or certificate~~ credential granted by the affiliated credentialing board.

3           **SECTION 4.** 157.12 (2) (b) of the statutes is amended to read:

4           157.12 (2) (b) The department shall supervise construction of any public  
5 mausoleum and conversion of any building to a public mausoleum. Within 30 days  
6 after receiving written notice from the cemetery authority that the construction or  
7 conversion has been completed, the department shall inspect the public mausoleum  
8 and provide the cemetery authority with a written certification as to whether the  
9 construction or conversion complies with approved plans. If the department  
10 determines that, except for certain minor defects, the construction or conversion  
11 complies with the approved plans, the department may provide the cemetery  
12 authority with a written temporary certification of compliance that is contingent on  
13 the correction of those minor defects. A temporary certification is valid for a period  
14 designated by the department, not to exceed 6 months. No person may sell a  
15 mausoleum space, except an undeveloped space that is sold in accordance with ~~s. ss.~~  
16 440.92 and 440.922, or bury human remains in a public mausoleum unless a care  
17 fund has been established for the mausoleum under sub. (3) and the department has  
18 provided the cemetery authority with a certification or a temporary certification  
19 under this paragraph. If a cemetery authority that has been provided with a  
20 temporary certification notifies the department in writing before the date on which  
21 the temporary certification expires that the defects in the construction or conversion  
22 of the public mausoleum have been corrected, the department shall, within 30 days  
23 after receiving the notice, reinspect the public mausoleum and provide the cemetery  
24 authority with a written certification as to whether the construction or conversion  
25 complies with the approved plans. If a cemetery authority that has been provided

1 with a temporary certification does not receive a written certification from the  
2 department before the date on which the temporary certification expires that the  
3 construction or conversion complies with the approved plans, then, beginning on the  
4 date on which the certification expires, no person may sell a mausoleum space, except  
5 an undeveloped space that is sold in accordance with ~~s. ss. 440.92 and 440.922~~, or  
6 bury human remains in the public mausoleum until the defects are corrected and the  
7 department subsequently inspects the public mausoleum and provides the cemetery  
8 authority with a certification that the construction or conversion complies with the  
9 approved plans. The department may charge a reasonable fee to the cemetery  
10 authority for each inspection and certification provided under this paragraph if the  
11 inspection and certification are provided within the applicable 30-day period  
12 prescribed under this paragraph.

13 <sup>1</sup> SECTION 5. 157.19 (2) (c) of the statutes is amended to read:

14 157.19 (2) (c) Upon request of the financial institution, the preneed seller, as  
15 defined in s. 440.90 (8), shall furnish the financial institution with a copy of the  
16 preneed sales contract. Except as provided in ~~s. 440.92 (2) (c), (f) and (j) and (5) ss.~~  
17 440.922 (3), (5) (c), and (8) and 440.924, preneed trust funds, and any interest or  
18 dividends that have accumulated on the preneed trust funds, may not be withdrawn  
19 until all obligations under the preneed sales contract have been fulfilled. The  
20 financial institution is not responsible for the fulfillment of any part of the preneed  
21 sales contract, except that the financial institution shall release the preneed trust  
22 funds, and any interest or dividends that have accumulated on the preneed trust  
23 funds, as provided by the terms of the preneed sales contract. The trustee of a  
24 preneed trust fund may not be changed without the department's written approval.



1 If the trustee or account number of a preneed trust fund is changed, the cemetery  
2 authority shall notify the department in writing within 30 days after the change.

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

4 157.19 (5) (a) This section does not apply to care funds under s. 157.11 (9g) that  
5 are deposited with a city or county as provided under s. 157.11 (9g) (a), to care funds  
6 of a cemetery for which a certification under s. 157.63 is effective, to preneed trust  
7 funds of a cemetery for which a certification under s. 440.92 ~~(9)~~ (4) (am) is effective,  
8 or to care funds or preneed trust funds of a cemetery authority that is not required  
9 to be registered under s. 440.91 (1) and that is not organized or conducted for  
10 pecuniary profit.

11 **SECTION 7.** 157.62 (6) of the statutes is amended to read:

12 157.62 (6) AUDIT. Except as provided in ss. 157.625, 157.63 (5) and 440.92 ~~(9)~~  
13 ~~(e)~~ (4) (am) 5., the department may audit, at reasonable times and frequency, the  
14 records, trust funds and accounts of any cemetery authority, including records, trust  
15 funds and accounts pertaining to services provided by a cemetery authority which  
16 are not otherwise subject to the requirements under this chapter. The department  
17 may conduct audits under this subsection on a random basis, and shall conduct all  
18 audits under this subsection without providing prior notice to the cemetery  
19 authority.

20 **SECTION 8.** 227.01 (6) of the statutes is amended to read:

21 227.01 (6) "Licensing" means an agency process relating to the granting,  
22 denial, renewal, revocation, suspension, annulment, withdrawal, limitation, or  
23 amendment of a license.

24 <sup>1</sup> **SECTION 9.** 227.485 (5) of the statutes is amended to read:

INSERT 6-23 ✓

1           227.485 (5) If the hearing examiner awards costs under sub. (3), he or she shall  
2 determine the costs under this subsection, except as modified under sub. (4). The  
3 decision on the ~~merits of the case~~ motion for costs shall be placed in a proposed  
4 decision and submitted under ss. 227.47 and 227.48. The prevailing party shall  
5 submit, within 30 days after service of the proposed decision, to the hearing examiner  
6 and to the state agency which is the losing party an itemized application for fees and  
7 other expenses, including an itemized statement from any attorney or expert witness  
8 representing or appearing on behalf of the party stating the actual time expended  
9 and the rate at which fees and other expenses were computed. The state agency  
10 which is the losing party has 15 working days from the date of receipt of the  
11 application to respond in writing to the hearing examiner. The hearing examiner  
12 shall determine the amount of costs using the criteria specified in s. 814.245 (5) and  
13 include an order for payment of costs in the final decision.

14           **SECTION 10.** 423.102 of the statutes is amended to read:

15           **423.102 Scope.** This chapter applies to all consumer transactions, except that  
16 subch. II does not apply to cemetery preneed sales under ~~s. 440.92~~ subch. VIII of ch.  
17 440.

18           **SECTION 11.** 440.01 (1) (d) of the statutes is amended to read:

19           440.01 (1) (d) "Limit", when used in reference to limiting a credential, means  
20 to impose conditions ~~and~~ or requirements upon the holder of the credential, ~~and~~ or  
21 to restrict the scope of the holder's practice.

22           **SECTION 12.** 440.042 (1) of the statutes is ~~renumbered 440.042~~ and amended  
23 to read:

24           **440.042 Advisory committees.** The secretary may appoint persons or  
25 advisory committees to advise the department and the boards, examining boards and

1 affiliated credentialing boards in the department on matters relating to the  
2 regulation of credential holders. The secretary shall appoint an advisory committee  
3 to advise the department on matters relating to carrying out the duties specified in  
4 s. 440.982 and making investigations, conducting hearings and taking disciplinary  
5 action under s. 440.986. A person or an advisory committee member appointed under  
6 this ~~subsection~~ section shall serve without compensation, but may be reimbursed for  
7 his or her actual and necessary expenses incurred in the performance of his or her  
8 duties.

9 **SECTION 13.** 440.042 (2) of the statutes is renumbered 440.043 and amended  
10 to read:

11 **440.043 Immunity from liability.** Any person who in good faith testifies  
12 before the department or any examining board, affiliated credentialing board or  
13 board in the department or otherwise provides the department or any examining  
14 board, affiliated credentialing board or board in the department with advice or  
15 information on a matter relating to the regulation of a person holding a credential  
16 is immune from civil liability for his or her acts or omissions in testifying or otherwise  
17 providing such advice or information. The good faith of any person specified in this  
18 ~~subsection~~ section shall be presumed in any civil action and an allegation that such  
19 a person has not acted in good faith must be proven by clear and convincing evidence.

20 **SECTION 14.** 440.26 (5) (b) of the statutes is amended to read:

21 440.26 (5) (b) The license requirements of this section do not apply to any  
22 person employed ~~directly or indirectly~~ by the state or by a municipality, as defined  
23 in s. 345.05 (1) (c), or to any employee of a railroad company under s. 192.47, or to  
24 any employee of a commercial establishment, while the person is acting within the

INSERT 9-2 ✓ ✓

1 scope of his or her employment and whether or not he or she is on the employer's  
2 premises.

3 SECTION 15. 440.92 (1) (a) of the statutes is amended to read:

4 440.92 (1) (a) Except as provided in ~~subs. sub. (4), (9) (a) and (10) s. 440.928,~~  
5 every individual who sells or solicits the sale of cemetery merchandise or an  
6 undeveloped space under a preneed sales contract and, if the individual is employed  
7 by or acting as an agent for a cemetery authority or any other person, that cemetery  
8 authority or other person is required to be registered under this subsection.

INSERT 9-8 ✓

9 SECTION 16. 440.92 (2) (title) of the statutes is renumbered 440.922 (title).

10 SECTION 17. 440.92 (2) (a) of the statutes is renumbered 440.922 (1) (a).

11 SECTION 18. 440.92 (2) (am) of the statutes is renumbered 440.922 (2).

12 SECTION 19. 440.92 (2) (b) of the statutes is renumbered 440.922 (1) (b).

13 SECTION 20. 440.92 (2) (c) of the statutes is renumbered 440.922 (3) and  
14 amended to read:

15 440.922 (3) VOIDING OF CONTRACTS. Except as provided in ~~par. (cm)~~ sub. (4), a  
16 preneed sales contract shall provide that if the purchaser voids the preneed sales  
17 contract at any time within 10 days after the date of the initial payment the preneed  
18 seller shall, within 30 days after the date on which the preneed sales contract is  
19 voided, refund all money paid by the purchaser for cemetery merchandise that has  
20 not been supplied or delivered and for the mausoleum space.

21 SECTION 21. 440.92 (2) (cm) of the statutes is renumbered 440.922 (4).

22 SECTION 22. 440.92 (2) (d) of the statutes is renumbered 440.922 (5) (a).

23 SECTION 23. 440.92 (2) (e) of the statutes is renumbered 440.922 (5) (b).

24 SECTION 24. 440.92 (2) (f) of the statutes is renumbered 440.922 (5) (c) and  
25 amended to read:

1           440.922 (5) (c) If a preneed sales contract is voided under par. (e) (b), the  
2 preneed seller shall, within 30 days after the date on which the preneed sales  
3 contract is voided, refund all money paid by the purchaser, together with interest  
4 calculated at the legal rate of interest as provided under s. 138.04.

5           **SECTION 25.** 440.92 (2) (g) of the statutes is renumbered 440.922 (6).

6           **SECTION 26.** 440.92 (2) (h) of the statutes is renumbered 440.922 (10).

7           **SECTION 27.** 440.92 (2) (i) of the statutes is renumbered 440.922 (7) and  
8 amended to read:

9           440.922 (7) TRUSTING REQUIREMENTS. If a preneed sales contract includes  
10 provisions for the sale of cemetery merchandise or an undeveloped space that is  
11 subject to the trusting requirements under sub. s. 440.92 (3) (a) and (b) and for the  
12 sale of other goods or services that are not subject to the trusting requirements under  
13 sub. s. 440.92 (3) (a) and (b), the sale price of the goods or services that are not subject  
14 to the trusting requirements may not be inflated for the purpose of allocating a lower  
15 sale price to the cemetery merchandise or undeveloped space that is subject to the  
16 trusting requirements.

17           **SECTION 28.** 440.92 (2) (j) of the statutes is renumbered 440.922 (8) and  
18 amended to read:

19           440.922 (8) CONTRACT REQUIREMENTS. A preneed sales contract shall be in  
20 writing. The preneed seller shall provide the purchaser with a copy of the preneed  
21 sales contract at the time that the preneed sales contract is entered into. A provision  
22 in a written preneed sales contract that limits the terms of the transaction to those  
23 included in the written preneed sales contract and that disclaims any oral  
24 agreements pertaining to the transaction creates a rebuttable presumption that no  
25 oral preneed sales contract pertaining to the transaction exists. A preneed sales

1 contract that is not in writing may not be voided by the preneed seller, but may be  
2 voided by the purchaser at any time before all of the cemetery merchandise  
3 purchased has been delivered, before the plans for constructing the mausoleum have  
4 been approved under s. 157.12 (2) (a) or, if the mausoleum is a public mausoleum,  
5 before the construction of the mausoleum has been certified under s. 157.12 (2) (b).  
6 If a preneed sales contract is voided under this ~~paragraph~~ subsection, the preneed  
7 seller shall, within 30 days after the date on which the preneed sales contract is  
8 voided, refund all money paid by the purchaser, together with interest calculated at  
9 the legal rate of interest as provided under s. 138.04.

10 **SECTION 29.** 440.92 (2) (k) of the statutes is renumbered 440.922 (9) and  
11 amended to read:

12 440.922 (9) NOTICE OF RIGHTS. A preneed sales contract shall include the  
13 following language in not less than 10-point boldface type: “SECTION 440.92 (2)  
14 440.922 OF THE WISCONSIN STATUTES SPECIFIES THE RIGHTS OF THE  
15 PURCHASER UNDER THIS CONTRACT. DEPENDING ON THE  
16 CIRCUMSTANCES, THESE MAY INCLUDE THE RIGHT TO VOID THE  
17 CONTRACT AND RECEIVE A REFUND OR THE RIGHT TO ASSIGN AN  
18 INTEREST IN THE CONTRACT TO ANOTHER PERSON.”

19 **SECTION 30.** 440.92 (4) (a) (title) and (am) (title) of the statutes are created to  
20 read:

21 440.92 (4) (a) (title) *Trusts; delivery guarantees.*

22 (am) (title) *Cemetery affiliated with religious society.*

23 **SECTION 31.** 440.92 (4) (b) (title) of the statutes is created to read:

24 440.92 (4) (b) (title) *Refunds.*

1           **SECTION 32.** 440.92 (5) of the statutes is renumbered 440.924 and amended to  
2 read:

3           **440.924 Use of preneed trust funds to cover costs of construction or**  
4 **partial performance.** (1) Before the construction of a mausoleum for which a  
5 preneed trust fund has been established is certified under s. 157.12 (2) (b), the  
6 trustee of the preneed trust fund shall, upon receipt of a written request for the  
7 release of a specified amount of the funds from the preneed seller and the person who  
8 is constructing the mausoleum, release the specified amount of the funds, but only  
9 if the request is accompanied by a sworn statement, signed by the preneed seller and  
10 the person who is constructing the mausoleum, certifying that the specified amount  
11 does not exceed the amount charged to the preneed seller by the person who is  
12 constructing the mausoleum for labor that has actually been performed and  
13 materials that have actually been used in the construction of the mausoleum, and  
14 does not include any cost for which preneed trust funds have been previously  
15 released under this ~~paragraph~~ subsection.

16           (2) Before all of the terms of a preneed sales contract for the sale of cemetery  
17 merchandise are fulfilled, the trustee of the preneed trust fund shall, upon receipt  
18 of a written request for the release of a specified amount of the funds from the  
19 preneed seller, release the specified amount of the funds, but only if the request is  
20 accompanied by a sworn statement, signed by the preneed seller, certifying that the  
21 specified amount does not exceed the actual cost to the preneed seller for any  
22 cemetery merchandise that has actually been supplied or delivered and for any  
23 cemetery services that have actually been performed, and does not include any cost  
24 for which preneed trust funds have been previously released under this ~~paragraph~~  
25 subsection.

1           **SECTION 33.** 440.92 (6) (title) of the statutes is renumbered 440.926 (title) and  
2 amended to read:

3           **440.926 (title) ~~Reporting; Preneed seller reporting and record keeping;~~**  
4 **audits.**

5           **SECTION 34.** 440.92 (6) (a) of the statutes is renumbered 440.926 (1) (a) and  
6 amended to read:

7           440.926 (1) (a) Every preneed seller registered under ~~sub. s. 440.92~~ (1) shall  
8 file an annual report with the department. The report shall be made on a form  
9 prescribed and furnished by the department. The report shall be made on a  
10 calendar-year basis unless the department, by rule, provides for other reporting  
11 periods. The report is due on or before the 60th day after the last day of the reporting  
12 period.

13           **SECTION 35.** 440.92 (6) (b) and (c) of the statutes are renumbered 440.926 (1)  
14 (b) and (c).

15           **SECTION 36.** 440.92 (6) (d) of the statutes is renumbered 440.926 (2) (c) and  
16 amended to read:

17           440.926 (2) (c) All records described under ~~pars. sub. (1) (b) 2. and (c)~~ and  
18 maintained by the department are confidential and are not available for inspection  
19 or copying under s. 19.35 (1). This paragraph does not apply to any information  
20 regarding the name, address, or employer of or financial information related to an  
21 individual that is requested under s. 49.22 (2m) by the department of workforce  
22 development or a county child support agency under s. 59.53 (5).

23           **SECTION 37.** 440.92 (6) (e) of the statutes is renumbered 440.926 (1) (d) and  
24 amended to read:



1           440.926 (1) (d) The department shall review each report filed under par. (a) to  
2 determine whether the preneed seller is complying with this ~~section~~ subchapter.

3           **SECTION 38.** 440.92 (6) (f) of the statutes is renumbered 440.926 (1) (e).

4           **SECTION 39.** 440.92 (6) (g) of the statutes is renumbered 440.926 (2) (a), and  
5 440.926 (2) (a) 1. and 2., as renumbered, are amended to read:

6           440.926 (2) (a) 1. The records needed to prepare the reports required under ~~par.~~  
7 sub. (1) (a).

8           2. Records that show, for each deposit in a trust fund or account specified in  
9 ~~par. sub. (1) (b) 2. and (c)~~, the name of the purchaser or beneficiary of the preneed  
10 sales contract relating to the deposit and the item purchased.

11           **SECTION 40.** 440.92 (6) (h) of the statutes is renumbered 440.926 (2) (b) and  
12 amended to read:

13           440.926 (2) (b) The records under ~~par. sub. (1) (b) 1.~~ shall be permanently  
14 maintained by the preneed seller. The records under ~~par. sub. (1) (b) 2.~~ shall be  
15 maintained for not less than 3 years after all of the obligations of the preneed sales  
16 contract have been fulfilled. The department may promulgate rules to establish  
17 longer time periods for maintaining records under this paragraph.

18           **SECTION 41.** 440.92 (6) (i) of the statutes is renumbered 440.926 (3) (a) and  
19 amended to read:

20           440.926 (3) (a) The department may promulgate rules requiring preneed  
21 sellers registered under ~~sub. s. 440.92 (1)~~ to maintain other records and establishing  
22 minimum time periods for the maintenance of those records.

23           **SECTION 42.** 440.92 (6) (j) of the statutes is renumbered 440.926 (4) and  
24 amended to read:

1           440.926 (4) AUDITS. The department may audit, at reasonable times and  
2 frequency, the records, trust funds, and accounts of any preneed seller registered  
3 under ~~sub. s. 440.92~~ (1), including records, trust funds, and accounts pertaining to  
4 services provided by a preneed seller which are not otherwise subject to the  
5 requirements under this ~~section~~ subchapter. The department may conduct audits  
6 under this ~~paragraph~~ subsection on a random basis, and shall conduct all audits  
7 under this ~~paragraph~~ subsection without providing prior notice to the preneed seller.

8           **SECTION 43.** 440.92 (6) (k) of the statutes is renumbered 440.926 (3) (b) and  
9 amended to read:

10           440.926 (3) (b) The department may promulgate rules establishing a filing fee  
11 to accompany the report required under ~~par. sub. (1)~~ (a). The filing fee shall be based  
12 on the approximate cost of regulating preneed sellers.

13           **SECTION 44.** 440.92 (7) of the statutes is renumbered 440.927 and amended to  
14 read:

15           **440.927 Approval of warehouses.** No person may own or operate a  
16 warehouse unless the warehouse is approved by the department. Upon application,  
17 the department shall approve a warehouse that is located in this state if the person  
18 who operates the warehouse is licensed as a public warehouse keeper by the  
19 department of agriculture, trade and consumer protection under ch. 99, but may not  
20 approve a warehouse that is located in this state unless the person is so licensed. The  
21 department shall promulgate rules establishing the requirements for approval of  
22 warehouses that are located outside this state. The rules shall require warehouses  
23 that are located outside this state to file with the department a bond furnished by  
24 a surety company authorized to do business in this state in an amount that is  
25 sufficient to guarantee the delivery of cemetery merchandise to purchasers under

1 preneed sales contracts. The department shall compile and keep a current list of the  
2 names and addresses of all warehouses approved under this ~~subsection~~ section and  
3 shall make the list available for public inspection during the times specified in s.  
4 230.35 (4) (f).

5 **SECTION 45.** 440.92 (9) (title) of the statutes is repealed.

6 **SECTION 46.** 440.92 (9) (a) of the statutes is renumbered 440.92 (4) (am) 1. and  
7 amended to read:

8 440.92 (4) (am) 1. If the cemetery authority of a cemetery that is affiliated with  
9 a religious society organized under ch. 187 or that religious society files an annual  
10 certification with the department as provided in this ~~subsection~~ paragraph, neither  
11 the cemetery authority nor any employee of the cemetery is required to be registered  
12 as a cemetery preneed seller under sub. (1) during the period for which the  
13 certification is effective.

14 **SECTION 47.** 440.92 (9) (b) of the statutes is renumbered 440.92 (4) (am) 2., and  
15 440.92 (4) (am) 2. (intro.) and c., as renumbered, are amended to read:

16 440.92 (4) (am) 2. (intro.) A certification under this ~~subsection~~ paragraph shall  
17 be made on a form prescribed and furnished by the department and include all of the  
18 following:

19 c. A notarized statement of a person who is legally authorized to act on behalf  
20 of the religious society under this ~~subsection~~ paragraph that, during the 12-month  
21 period immediately preceding the date on which the certification is filed with the  
22 department, each employee specified under subd. 2. b. and the cemetery authority  
23 have either fully complied or have substantially complied with ~~subs. (2), sub. (3) (a)~~  
24 and (b) and ~~(5)~~ ss. 440.922 and 44.924.

1           **SECTION 48.** 440.92 (9) (c) of the statutes is renumbered 440.92 (4) (am) 3. and  
2 amended to read:

3           440.92 (4) (am) 3. If the statement under ~~par. (b) 3.~~ subd. 2. c. includes a  
4 statement of substantial compliance, the statement of substantial compliance must  
5 also specify those instances when the employee or cemetery authority did not fully  
6 comply with sub. ~~(2),~~ (3) (a) or (b) or ~~(5)~~ s. 440.922 or 440.924.

7           **SECTION 49.** 440.92 (9) (d) of the statutes is renumbered 440.92 (4) (am) 4. and  
8 amended to read:

9           440.92 (4) (am) 4. A certification under this ~~subsection~~ paragraph is effective  
10 for the 12-month period immediately following the date on which the certification  
11 is filed with the department.

12           **SECTION 50.** 440.92 (9) (e) of the statutes is renumbered 440.92 (4) (am) 5. and  
13 amended to read:

14           440.92 (4) (am) 5. During the effective period specified under ~~par. (d)~~ subd. 4.,  
15 the department may not audit the preneed trust funds or any records or accounts  
16 relating to the preneed trust funds of the cemetery authority or any employee of the  
17 cemetery to which a certification under this ~~subsection~~ paragraph applies.

18           **SECTION 51.** 440.92 (9) (f) of the statutes is renumbered 440.92 (4) (am) 6. and  
19 amended to read:

20           440.92 (4) (am) 6. The religious society that is affiliated with a cemetery to  
21 which a certification under this ~~subsection~~ paragraph applies is liable for the  
22 damages of any person that result from the failure of any employee specified under  
23 ~~par. (b)~~ subd. 2. b. or the cemetery authority to fully comply with sub. ~~(2),~~ (3) (a) or  
24 (b) or ~~(5)~~ s. 440.922 or 440.924 during the 12-month period for which such compliance  
25 has been certified under this ~~subsection~~ paragraph.

1           **SECTION 52.** 440.92 (10) of the statutes is renumbered 440.928 and amended  
2 to read:

3           **440.928 Exemptions; certain nonprofit cemeteries.** ~~This section does~~  
4 ~~Sections 440.92 to 440.927 do~~ not apply to a cemetery authority that is not required  
5 to be registered under s. 440.91 (1) and that is not organized or conducted for  
6 pecuniary profit.

7           **SECTION 53.** 440.922 (1) (title), (2) (title), (4) (title), (5) (title), (6) (title) and (10)  
8 (title) of the statutes are created to read:

9           **440.922 (1) (title) DELIVERY OF CEMETERY MERCHANDISE.**

10           **(2) (title) AFFIXTURE OF CEMETERY MERCHANDISE.**

11           **(4) (title) PHYSICAL ALTERATION OF CEMETERY MERCHANDISE.**

12           **(5) (title) UNDEVELOPED SPACE SALES.**

13           **(6) (title) INTEREST ASSIGNMENTS.**

14           **(10) (title) CONFLICTING PROVISIONS.**

15           **SECTION 54.** 440.926 (1) (title), (2) (title) and (3) (title) of the statutes are  
16 created to read:

17           **440.926 (1) (title) REPORTS.**

18           **(2) (title) RECORDS.**

19           **(3) (title) RULES.**

20           **SECTION 55.** 440.95 (4) (c) of the statutes is amended to read:

21           **440.95 (4) (c)** Fails to file a report or files an incomplete, false or misleading  
22 report under s. ~~440.92 (6)~~ 440.926.

23           **SECTION 56.** 440.95 (4) (d) of the statutes is amended to read:

24           **440.95 (4) (d)** Files a false or misleading certification under s. 440.92 ~~(9)~~ (4)  
25 (am).

1 SECTION 57. 440.95 (5) of the statutes is amended to read:

2 440.95 (5) Except as provided in sub. (4), any person who violates s. ~~ss.~~ 440.92  
3 to 440.927 or any rule promulgated under s. ~~ss.~~ 440.92 to 440.927 may be required  
4 to forfeit not more than \$200 for each offense. Each day of continued violation  
5 constitutes a separate offense. *INSERT 19-8*

6 SECTION 58. 443.10 (2) (b) of the statutes is amended to read:

7 443.10 (2) (b) The fees for examinations and the fees and renewal dates for  
8 licenses granted or renewed under this chapter are specified in ss. 440.05 and 440.08.

9 SECTION 59. 443.10 (2) (e) of the statutes is repealed.

10 SECTION 60. 453.06 (2) of the statutes is repealed. *INSERT 19-10*

11 SECTION 61. 453.06 (4) of the statutes is amended to read:

12 453.06 (4) The renewal date and renewal fee for veterinary licenses and  
13 veterinary technician certifications are specified under s. 440.08 (2) (a).

14 SECTION 62. 455.06 of the statutes is amended to read:

15 **455.06 Renewals.** The renewal date and renewal fee for licenses issued under  
16 s. 455.04 (1) and (4) are specified under s. 440.08 (2) (a). Late renewal fees are  
17 specified in s. 440.08 (3) (a). An applicant for renewal of a license shall include with  
18 his or her application proof of completion of continuing education programs or  
19 courses approved under s. 455.065 (4) for the minimum number of hours required in  
20 the rules promulgated under s. 455.065 (1).

21 (END)

*INSERT 19-20*



2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4184/lins  
MDK:.....

LPS:  
Make sure  
that all  
these inserts  
are rendered  
with note:std

1

**INSERT 3-7:**

NOTE: Sections 1, 2 and 3 of this bill substitute "credential" for "license, permit, or certificate" to make the terminology consistent with the terms used in other laws relating to the department of regulation and licensing.

2

**INSERT 5-12:**

NOTE: Sections 4, 5, 6 and 7 of this bill change statutory references to reflect the creation of titles for and the renumbering of s. 440.92, Stats., relating to regulation of cemetery preneed sellers. According to the department of regulation and licensing, the current statute is difficult to use due to its length and organization.

3

**INSERT 6-23:**

NOTE: Section 8 of this bill adds "limitation" to the definition of the licensing process in ch. 227, Stats. to be consistent with other laws relating to the department of regulation and licensing which include limitation as a licensing action.

4

**INSERT 7-13:**

NOTE: Section 9 of this bill specifies that if a prevailing party submits a motion for costs, the hearing examiner's decision on the motion for costs must be included in a proposed decision.

5

**INSERT 7-17:**

NOTE: Section 10 of this bill changes statutory references to reflect the creation of titles for and the renumbering of s. 440.92, Stats., relating to regulation of cemetery preneed sellers. According to the department of regulation and licensing, the current statute is difficult to use due to its length and organization.

6

**INSERT 7-21:**

NOTE: Section 11 of this bill allows the department of regulation and licensing to impose conditions or requirements upon the holder of a credential or to restrict the scope of the holder's practice. Currently, an order to limit a holder's credential must include a provision that restricts the scope of the holder's practice. According to the department of regulation and licensing, in some cases a restriction on a holder's practice scope is not appropriate.

7

**INSERT 8-8:**

NOTE: Section 12 of this bill changes "subsection" to "section" to conform to the renumbering of s. 440.042, Stats., relating to advisory committees to the department of regulation and licensing.

8

**INSERT 8-19:**

NOTE: Section 13 of this bill changes "subsection" to "section" and creates a statutory title to conform to the renumbering of s. 440.042, Stats., pertaining to immunity from liability for testimony before the department of regulation and licensing or any examining board.

1

**INSERT 9-2:**

NOTE: Section 14 of this bill eliminates the phrase "directly or indirectly" from the exemption to the license requirement for private detectives, private detective agencies and private security personnel. According to the department of regulation and licensing, the term "indirectly" is not defined, which causes difficulty in interpreting the law.

2

**INSERT 9-8:**

NOTE: Sections 15, 16 to 53, 54, 55, 56 and 57 reflect the creation of statutory titles for and the renumbering of s. 440.92, Stats., pertaining to the regulation of cemetery preneed sellers. According to the department of regulation and licensing, the current statute is difficult to use due to its length and organization.

3

**INSERT 19-8:**

NOTE: Sections 58 and 59 eliminate redundancy in the statutes regarding license renewal requirements for architects, landscape architects and professional engineers.

4

**INSERT 19-10:**

NOTE: Sections 60 and 61 eliminate redundancy in the statutes regarding renewal requirements for veterinarian licenses and veterinary technician certifications.

5

**INSERT 19-20:**

NOTE: Section 62 of this bill eliminates redundancy in the statutes regarding license renewal requirements for psychologists.



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

LRB-4184/1dn  
MDK.....

js

Rachel Letzing:

This version is identical to the previous version, except for the inclusion of your NOTES.

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

LRB-4184/1dn  
MDK:ej:kjf

December 4, 2001

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STEPHEN R. MILLER  
CHIEF

# State of Wisconsin

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December 4, 2001

### MEMORANDUM

To: Legislative Council - LRC

From: Mark D. Kunkel, Legislative Attorney

Re: LRB-4184/1 Various remedial changes

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

\_\_\_\_\_ JACKET FOR ASSEMBLY  JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-0131 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.