



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-4184/1
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2001 SENATE BILL 347

December 6, 2001 - Introduced by LAW REVISION COMMITTEE. Referred to
Committee on Universities, Housing, and Government Operations.

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 (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**

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

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.

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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.

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.

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

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1 15.08 (5) (c) May limit, suspend or revoke, or reprimand the holder of, any
2 license, ~~permit or certificate~~ credential granted by the examining board.

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

4 15.085 (5) (c) May limit, suspend or revoke, or reprimand the holder of, any
5 license, ~~permit or certificate~~ credential granted by the affiliated credentialing board.

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

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

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

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.

16 **SECTION 5.** 157.19 (2) (c) of the statutes is amended to read:

17 157.19 (2) (c) Upon request of the financial institution, the preneed seller, as
18 defined in s. 440.90 (8), shall furnish the financial institution with a copy of the
19 preneed sales contract. Except as provided in s. ~~440.92 (2) (c), (f) and (j) and (5) ss.~~
20 440.922 (3), (5) (c), and (8) and 440.924, preneed trust funds, and any interest or
21 dividends that have accumulated on the preneed trust funds, may not be withdrawn
22 until all obligations under the preneed sales contract have been fulfilled. The
23 financial institution is not responsible for the fulfillment of any part of the preneed

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

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

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

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

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

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

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1 227.01 (6) “Licensing” means an agency process relating to the granting,
2 denial, renewal, revocation, suspension, annulment, withdrawal, limitation, or
3 amendment of a license.

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 **SECTION 9.** 227.485 (5) of the statutes is amended to read:

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

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.

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

19 **423.102 Scope.** This chapter applies to all consumer transactions, except that
20 subch. II does not apply to cemetery preneed sales under s. ~~440.92~~ subch. VIII of ch.
21 440.

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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.

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

2 440.01 (1) (d) "Limit", when used in reference to limiting a credential, means
3 to impose conditions ~~and~~ or requirements upon the holder of the credential, ~~and~~ or
4 to restrict the scope of the holder's practice.

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.

5 **SECTION 12.** 440.042 (1) of the statutes is renumbered 440.042 and amended
6 to read:

7 **440.042 Advisory committees.** The secretary may appoint persons or
8 advisory committees to advise the department and the boards, examining boards and
9 affiliated credentialing boards in the department on matters relating to the
10 regulation of credential holders. The secretary shall appoint an advisory committee
11 to advise the department on matters relating to carrying out the duties specified in
12 s. 440.982 and making investigations, conducting hearings and taking disciplinary
13 action under s. 440.986. A person or an advisory committee member appointed under
14 ~~this subsection~~ section shall serve without compensation, but may be reimbursed for
15 his or her actual and necessary expenses incurred in the performance of his or her
16 duties.

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.

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

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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.

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.

10 **SECTION 14.** 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.

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 the department of regulation and licensing, the term “indirectly” is not defined, which causes difficulty in interpreting the law.

17 **SECTION 15.** 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

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1 by or acting as an agent for a cemetery authority or any other person, that cemetery
2 authority or other person is required to be registered under this subsection.

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

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

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

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

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

9 440.922 (3) VOIDING OF CONTRACTS. Except as provided in par. ~~(em)~~ 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 **SECTION 21.** 440.92 (2) (cm) of the statutes is renumbered 440.922 (4).

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

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

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

20 440.922 (5) (c) If a preneed sales contract is voided under par. ~~(e)~~ (b), the
21 preneed seller shall, within 30 days after the date on which the preneed sales
22 contract is voided, refund all money paid by the purchaser, together with interest
23 calculated at the legal rate of interest as provided under s. 138.04.

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

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

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

5 440.922 (7) TRUSTING REQUIREMENTS. If a preneed sales contract includes
6 provisions for the sale of cemetery merchandise or an undeveloped space that is
7 subject to the trusting requirements under ~~sub. s. 440.92~~ (3) (a) and (b) and for the
8 sale of other goods or services that are not subject to the trusting requirements under
9 ~~sub. s. 440.92~~ (3) (a) and (b), the sale price of the goods or services that are not subject
10 to the trusting requirements may not be inflated for the purpose of allocating a lower
11 sale price to the cemetery merchandise or undeveloped space that is subject to the
12 trusting requirements.

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

15 440.922 (8) CONTRACT REQUIREMENTS. A preneed sales contract shall be in
16 writing. The preneed seller shall provide the purchaser with a copy of the preneed
17 sales contract at the time that the preneed sales contract is entered into. A provision
18 in a written preneed sales contract that limits the terms of the transaction to those
19 included in the written preneed sales contract and that disclaims any oral
20 agreements pertaining to the transaction creates a rebuttable presumption that no
21 oral preneed sales contract pertaining to the transaction exists. A preneed sales
22 contract that is not in writing may not be voided by the preneed seller, but may be
23 voided by the purchaser at any time before all of the cemetery merchandise
24 purchased has been delivered, before the plans for constructing the mausoleum have
25 been approved under s. 157.12 (2) (a) or, if the mausoleum is a public mausoleum,

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1 before the construction of the mausoleum has been certified under s. 157.12 (2) (b).
2 If a preneed sales contract is voided under this ~~paragraph~~ subsection, the preneed
3 seller shall, within 30 days after the date on which the preneed sales contract is
4 voided, refund all money paid by the purchaser, together with interest calculated at
5 the legal rate of interest as provided under s. 138.04.

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

8 440.922 (9) NOTICE OF RIGHTS. A preneed sales contract shall include the
9 following language in not less than 10-point boldface type: "SECTION 440.92 (2)
10 440.922 OF THE WISCONSIN STATUTES SPECIFIES THE RIGHTS OF THE
11 PURCHASER UNDER THIS CONTRACT. DEPENDING ON THE
12 CIRCUMSTANCES, THESE MAY INCLUDE THE RIGHT TO VOID THE
13 CONTRACT AND RECEIVE A REFUND OR THE RIGHT TO ASSIGN AN
14 INTEREST IN THE CONTRACT TO ANOTHER PERSON."

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

17 440.92 (4) (a) (title) *Trusts; delivery guarantees.*

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

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

20 440.92 (4) (b) (title) *Refunds.*

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

23 **440.924 Use of preneed trust funds to cover costs of construction or**
24 **partial performance.** (1) Before the construction of a mausoleum for which a
25 preneed trust fund has been established is certified under s. 157.12 (2) (b), the

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1 trustee of the preneed trust fund shall, upon receipt of a written request for the
2 release of a specified amount of the funds from the preneed seller and the person who
3 is constructing the mausoleum, release the specified amount of the funds, but only
4 if the request is accompanied by a sworn statement, signed by the preneed seller and
5 the person who is constructing the mausoleum, certifying that the specified amount
6 does not exceed the amount charged to the preneed seller by the person who is
7 constructing the mausoleum for labor that has actually been performed and
8 materials that have actually been used in the construction of the mausoleum, and
9 does not include any cost for which preneed trust funds have been previously
10 released under this ~~paragraph~~ subsection.

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

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

23 **440.926** (title) **Reporting; Preneed seller reporting and record keeping;**
24 **audits.**

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

3 440.926 (1) (a) Every preneed seller registered under ~~sub. s. 440.92~~ (1) shall
4 file an annual report with the department. The report shall be made on a form
5 prescribed and furnished by the department. The report shall be made on a
6 calendar-year basis unless the department, by rule, provides for other reporting
7 periods. The report is due on or before the 60th day after the last day of the reporting
8 period.

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

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

13 440.926 (2) (c) All records described under ~~pars. sub. (1) (b) 2. and (c)~~ and
14 maintained by the department are confidential and are not available for inspection
15 or copying under s. 19.35 (1). This paragraph does not apply to any information
16 regarding the name, address, or employer of or financial information related to an
17 individual that is requested under s. 49.22 (2m) by the department of workforce
18 development or a county child support agency under s. 59.53 (5).

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

21 440.926 (1) (d) The department shall review each report filed under par. (a) to
22 determine whether the preneed seller is complying with this ~~section~~ subchapter.

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

24 **SECTION 39.** 440.92 (6) (g) of the statutes is renumbered 440.926 (2) (a), and
25 440.926 (2) (a) 1. and 2., as renumbered, are amended to read:

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

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

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

8 440.926 (2) (b) The records under ~~par.~~ ~~sub. (1)~~ (b) 1. shall be permanently
9 maintained by the preneed seller. The records under ~~par.~~ ~~sub. (1)~~ (b) 2. shall be
10 maintained for not less than 3 years after all of the obligations of the preneed sales
11 contract have been fulfilled. The department may promulgate rules to establish
12 longer time periods for maintaining records under this paragraph.

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

15 440.926 (3) (a) The department may promulgate rules requiring preneed
16 sellers registered under ~~sub. s. 440.92~~ (1) to maintain other records and establishing
17 minimum time periods for the maintenance of those records.

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

20 440.926 (4) AUDITS. The department may audit, at reasonable times and
21 frequency, the records, trust funds, and accounts of any preneed seller registered
22 under ~~sub. s. 440.92~~ (1), including records, trust funds, and accounts pertaining to
23 services provided by a preneed seller which are not otherwise subject to the
24 requirements under this ~~section~~ subchapter. The department may conduct audits

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1 under this ~~paragraph~~ subsection on a random basis, and shall conduct all audits
2 under this ~~paragraph~~ subsection without providing prior notice to the preneed seller.

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

5 440.926 (3) (b) The department may promulgate rules establishing a filing fee
6 to accompany the report required under ~~par. sub. (1)~~ (a). The filing fee shall be based
7 on the approximate cost of regulating preneed sellers.

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

10 **440.927 Approval of warehouses.** No person may own or operate a
11 warehouse unless the warehouse is approved by the department. Upon application,
12 the department shall approve a warehouse that is located in this state if the person
13 who operates the warehouse is licensed as a public warehouse keeper by the
14 department of agriculture, trade and consumer protection under ch. 99, but may not
15 approve a warehouse that is located in this state unless the person is so licensed. The
16 department shall promulgate rules establishing the requirements for approval of
17 warehouses that are located outside this state. The rules shall require warehouses
18 that are located outside this state to file with the department a bond furnished by
19 a surety company authorized to do business in this state in an amount that is
20 sufficient to guarantee the delivery of cemetery merchandise to purchasers under
21 preneed sales contracts. The department shall compile and keep a current list of the
22 names and addresses of all warehouses approved under this ~~subsection~~ section and
23 shall make the list available for public inspection during the times specified in s.
24 230.35 (4) (f).

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

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

3 440.92 (4) (am) 1. If the cemetery authority of a cemetery that is affiliated with
4 a religious society organized under ch. 187 or that religious society files an annual
5 certification with the department as provided in this subsection paragraph, neither
6 the cemetery authority nor any employee of the cemetery is required to be registered
7 as a cemetery preneed seller under sub. (1) during the period for which the
8 certification is effective.

9 **SECTION 47.** 440.92 (9) (b) of the statutes is renumbered 440.92 (4) (am) 2., and
10 440.92 (4) (am) 2. (intro.) and c., as renumbered, are amended to read:

11 440.92 (4) (am) 2. (intro.) A certification under this subsection paragraph shall
12 be made on a form prescribed and furnished by the department and include all of the
13 following:

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

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

22 440.92 (4) (am) 3. If the statement under ~~par. (b) 3.~~ subd. 2. c. includes a
23 statement of substantial compliance, the statement of substantial compliance must
24 also specify those instances when the employee or cemetery authority did not fully
25 comply with sub. ~~(2),~~ (3) (a) or (b) or ~~(5) s. 440.922 or 440.924.~~

SENATE BILL 347**SECTION 49**

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

3 440.92 (4) (am) 4. A certification under this ~~subsection~~ paragraph is effective
4 for the 12-month period immediately following the date on which the certification
5 is filed with the department.

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

8 440.92 (4) (am) 5. During the effective period specified under ~~par. (d)~~ subd. 4.,
9 the department may not audit the preneed trust funds or any records or accounts
10 relating to the preneed trust funds of the cemetery authority or any employee of the
11 cemetery to which a certification under this ~~subsection~~ paragraph applies.

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

14 440.92 (4) (am) 6. The religious society that is affiliated with a cemetery to
15 which a certification under this ~~subsection~~ paragraph applies is liable for the
16 damages of any person that result from the failure of any employee specified under
17 ~~par. (b)~~ subd. 2. b. or the cemetery authority to fully comply with sub. (2), (3) (a) or
18 (b) or ~~(5)~~ s. 440.922 or 440.924 during the 12-month period for which such compliance
19 has been certified under this ~~subsection~~ paragraph.

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

22 **440.928 Exemptions; certain nonprofit cemeteries.** ~~This section does~~
23 Sections 440.92 to 440.927 do not apply to a cemetery authority that is not required
24 to be registered under s. 440.91 (1) and that is not organized or conducted for
25 pecuniary profit.

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

3 440.922 **(1)** (title) DELIVERY OF CEMETERY MERCHANDISE.

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

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

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

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

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

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

11 440.926 **(1)** (title) REPORTS.

12 **(2)** (title) RECORDS.

13 **(3)** (title) RULES.

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

15 440.95 **(4)** (c) Fails to file a report or files an incomplete, false or misleading
16 report under s. ~~440.92 (6)~~ 440.926.

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

18 440.95 **(4)** (d) Files a false or misleading certification under s. 440.92 ~~(9)~~ (4)
19 (am).

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

21 440.95 **(5)** Except as provided in sub. (4), any person who violates s. ss. 440.92
22 to 440.927 or any rule promulgated under s. ss. 440.92 to 440.927 may be required
23 to forfeit not more than \$200 for each offense. Each day of continued violation
24 constitutes a separate offense.

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

