

CR 93-192

CERTIFICATE

STATE OF WISCONSIN

DEPARTMENT OF REGULATION AND LICENSING

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

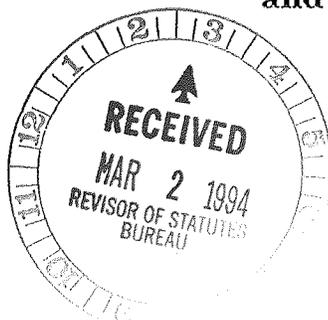
I, Marlene A. Cummings, Secretary of the Wisconsin Department of Regulation and Licensing and custodian of the official records of the Department of Regulation and Licensing, do hereby certify that the annexed rules were duly approved and adopted by the Department of Regulation and Licensing on the 1st day of March, 1994.

I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at 1400 East Washington Avenue, Madison, Wisconsin this 1st day of March, 1994.



Marlene A. Cummings
Secretary
Department of Regulation
and Licensing



5-1-94

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

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|------------------------------|---|--|
| IN THE MATTER OF RULE-MAKING | : | ORDER OF THE |
| PROCEEDINGS BEFORE THE | : | DEPARTMENT OF REGULATION AND LICENSING |
| DEPARTMENT OF REGULATION | : | ADOPTING RULES |
| AND LICENSING | : | (CLEARINGHOUSE RULE 93-192) |

ORDER

An order of the Department of Regulation and Licensing to repeal and recreate RL 50.05 and chapter RL 54 relating to the cemetery consumer protection fund, annual report filing fees, and the procedures and requirements for approval of cemetery care fund investments.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

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

Statutes interpreted: ss. 157.11 (9g) (a) 1 c, 157.62 and 440.92 (6), Stats.

Section RL 50.05 currently requires all cemetery authorities and preneed sellers which are required to file an annual report with the department to submit a \$40 fee with the report. SECTION 1 of this rule proposal would repeal and recreate s. RL 50.05, so that the amount of the fee would vary in accordance with varying conditions under which the reports are filed. A cemetery authority or a preneed seller which is required to file an annual report as either a cemetery authority or a preneed seller, but not both, is required to pay a \$40 report filing fee (with the exception of preneed sellers who are employees, as noted in the next paragraph). On the other hand, since a cemetery authority which is also registered as a preneed seller is able to report on its activities as both a cemetery authority and a preneed seller in a single report, it would only be required to submit a \$40 fee.

Finally, those preneed sellers who negotiate preneed sales contracts in the name of and on behalf of an employer or principal would not be required to submit a fee, because they would not have anything substantive to report. The only reason for requiring a report from them would be to inform the department whether they acted as a preneed seller on behalf of an employer or principal. In such cases, the employer or principal would be required to report on the disposition of the preneed care funds relating to the preneed sales contracts negotiated by the employee or agent.

The Cemetery Consumer Protection Fund was repealed by action of the Joint Finance Committee when reviewing the Biennial Budget Bill, 1993 Senate Bill 44. The Department of Regulation and Licensing had proposed that technical corrections be made to s. 440.92 (8), Stats. These corrections had been included in 1993 Senate Bill 44. However, when the Joint Finance Committee reviewed various alternatives for corrective action which were presented to it by the Legislative Fiscal Bureau, it voted to repeal s. 440.92 (8), Stats., and several references which related to it. Section 440.92 (8) was repealed by 1993 Wisconsin Act 16.

Section 157.11 (9g) (a) 1, Stats., established three ways in which cemetery authorities are permitted to invest their care funds received from the sale of cemetery lots. The first way allows a cemetery authority to deposit its funds with a financial institution pursuant to s. 157.19, Stats. A cemetery authority may also deposit care funds with the treasurer of the county or city in which the cemetery is located if the governing body of the county or city accepts such deposits. The third option permits a cemetery authority to place its care funds in an investment approved by the Department of Regulation and Licensing so long as the funds are segregated and invested separately from all other monies held by the cemetery authority. This third option is the subject of ch. RL 54, created by this rule.

Section RL 54.02 sets forth the purpose of ch. RL 54 and its intent. Section RL 54.03 defines "alternative investment," "care funds" and "department." Section RL 54.04 sets forth the criteria for what types of investments will be permitted. In addition, s. RL 54.05 includes the procedures for obtaining approval from the Department of Regulation and Licensing for these alternative investments.

TEXT OF RULE

SECTION 1. RL 50.05 is repealed and recreated to read:

RL 50.05 ANNUAL REPORT FILING FEE. A cemetery authority and a preneed seller shall submit a fee with an annual report filed with the department under s. RL 50.01, as follows:

- (1) A cemetery authority: \$40.
- (2) A cemetery authority which is also required to file an annual report as a preneed seller: \$40.
- (3) Except as provided in sub. (4), a preneed seller: \$40.
- (4) A preneed seller who files an annual report stating that the preneed seller is an employee or agent of a registered preneed seller, that all preneed sales contracts negotiated by the preneed seller were entered into on behalf of the preneed seller's employer or principal and that all preneed trust funds received by the preneed seller were turned over to the preneed seller's employer or principal for deposit and disbursement pursuant to s. 157.19, Stats.: \$0.

SECTION 2. Chapter RL 54 is repealed and recreated to read:

CHAPTER RL 54 (title)

APPROVAL OF ALTERNATIVE CARE FUND INVESTMENTS

RL 54.01 AUTHORITY. This chapter is adopted pursuant to ss. 157.11 (9g) (a) 1 c and 227.11 (2), Stats.

RL 54.02 INTENT. The intent of this chapter is to assure that cemetery authorities which are required to register with the department maintain intact the principal amount in care funds in order to generate sufficient income to maintain cemeteries in perpetuity and to ensure that cemeteries in Wisconsin do not become a financial burden to taxpayers. It is also the intent to

prohibit the officers, trustees, and the immediate family of the cemetery authority from directly profiting from the investments that are made by and on behalf of it.

RL 54.03 DEFINITIONS. As used in this chapter:

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

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

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

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

(a) Corporate bonds or bonds or other instruments of indebtedness issued or guaranteed by governmental units in the United States, provided that the bonds or instruments of indebtedness are rated AA or above by Standard & Poors or by Moody's Investors Services. Once one or more of these instruments drops below an A rating and remains below that rating for 2 consecutive quarters, the cemetery authority shall divest those instruments within 180 days or proceed under par. (e).

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

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

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

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

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

(3) No cemetery authority may invest in any entity or company in which an officer or trustee of the cemetery authority has more than a 5% ownership interest.

(4) No cemetery authority may invest in any entity or company in which a spouse or child of an officer or trustee of the cemetery authority or other family member who receives one-half of his or her support from an officer or trustee shall have more than a 5% ownership interest.

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

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

(3) If the investment proposal meets the criteria set forth in s. RL 54.04, the department may issue a letter of approval. Investments which are not approved may be appealed under chapter RL 1.

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

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

(6) After department approval is obtained, the cemetery authority need not obtain further approval to increase the number of shares or units in the same security or investment if the shares or units meet the criteria set forth in s. RL 54.04 (1) (a) to (d), (3) and (4).

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register pursuant to s. 227.22 (2) (intro.), Stats.

Dated

3/1/94



Agency

Marlene A. Cummings
Marlene A. Cummings, Secretary
Department of Regulation
and Licensing

CORRESPONDENCE/MEMORANDUM

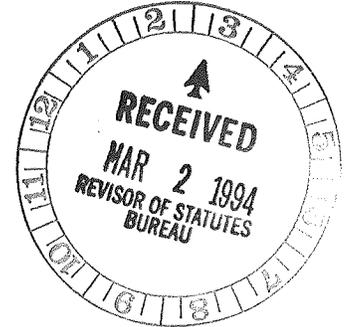
STATE OF WISCONSIN

DATE: March 2, 1994

TO: Gary Poulson
Assistant Revisor of Statutes

FROM: Pamela Haack, Administrative Assistant
Department of Regulation and Licensing

SUBJECT: Final Rulemaking Order



Agency: DEPARTMENT OF REGULATION AND LICENSING

Clearinghouse Rule: 93-192

Attached is a copy and a certified copy of a final order adopting rules.
Would you please publish these rules in the code.

Please stamp or sign a copy of this letter to acknowledge receipt.

Thank you.