



2007 ASSEMBLY BILL 547

October 18, 2007 – Introduced by Representatives KAUFERT, KERKMAN, NEWCOMER, NYGREN, A. OTT, OWENS, SINICKI and TOWNSEND, cosponsored by Senators PLALE, LASSA, OLSEN, LAZICH and ROESSLER. Referred to Committee on Small Business.

1 **AN ACT to amend** 157.062 (9), 157.08 (5), 157.11 (9g) (a) 1. c., 157.19 (2) (b) to (d),
2 157.19 (4) (intro.), 157.19 (5) (a), 157.19 (5) (b), 157.62 (2) (a) and (c), 157.625
3 (3), 440.91 (1) (a), 440.91 (1) (c), 440.91 (6m), 440.92 (2) (a) 4. a., 440.92 (7) and
4 440.92 (10); and **to create** 440.08 (2) (a) 21m. and 440.91 (1m) of the statutes;
5 **relating to:** regulation of and registration requirements for certain cemetery
6 authorities, cemetery associations, and cemetery merchandise.

Analysis by the Legislative Reference Bureau

This bill makes a number of changes in the laws governing cemetery associations and cemetery authorities.

Trustees of care funds and preneed trust funds

Under current law, a cemetery authority may not change the trustee of a care fund or a preneed trust fund without written approval from the Department of Regulation and Licensing (DRL). DRL must establish rules governing approval of a change of a trustee. DRL must also oversee the management of care funds held by a cemetery authority and approve the investment of certain funds. This bill transfers these responsibilities from DRL to the Cemetery Board (board).

Licensure and registration of certain cemeteries

Under current law, with limited exceptions, any cemetery authority that operates a cemetery that is five acres or more in size, that sells 20 or more cemetery

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lots or mausoleum spaces at a cemetery during a calendar year, or that has \$100,000 or more in preneed trust fund accounts for a cemetery must be licensed by the board. Cemetery authorities that are operated by a municipality; church; religious, fraternal, or benevolent organization; or incorporated college of a religious order are not required to be licensed.

This bill requires any cemetery authority having \$100,000 or more in any trust fund accounts, rather than just preneed trust fund accounts, to be licensed by the board. This bill also requires any cemetery authority that operates a cemetery that is less than five acres in size, that sells fewer than 20 cemetery lots or mausoleum spaces at a cemetery during a calendar year, or that has less than \$100,000 in trust fund accounts for a cemetery to register that cemetery with the board. Cemetery authorities that are operated by a municipality; church; religious, fraternal, or benevolent organization; or incorporated college of a religious order are not required to register with the board.

Reporting requirements

Under current law, a cemetery association must submit certain information about the cemetery association to the Department of Financial Institutions (DFI) to obtain the powers of a corporation. However, a cemetery association that is not required to be licensed by the board and a cemetery association that is not organized or conducted for pecuniary profit (nonprofit cemetery association) must instead submit the information to the office of the register of deeds of the county in which the cemetery is located. This bill requires a nonprofit cemetery association to submit information about the cemetery association to DFI instead of to the register of deeds. This bill also requires a cemetery association that is not required to be registered by the board to submit information about the cemetery association to the office of the register of deeds of the county in which the cemetery is located.

Under current law, a cemetery authority must submit an annual report to DRL. Current law exempts cemetery authorities that are not required to be licensed by the board (exempt cemetery authority) from the reporting requirement. Current law also exempts cemetery authorities that are not organized or conducted for pecuniary profit (nonprofit cemetery authority) from the reporting requirement. This bill eliminates the exemption from the reporting requirement for nonprofit cemetery authorities. The bill creates an exemption from the reporting requirement for a cemetery authority that is not required to be registered with the board. This bill also requires cemetery authorities that are subject to the reporting requirement to submit the report to the board instead of to DRL.

Deposit and investment of care funds and preneed trust funds

With certain exceptions, current law regulates the deposit, investment, and withdrawal of care funds and preneed trust funds by a cemetery authority. Current law exempts exempt cemetery authorities and nonprofit cemetery authorities from this regulation. This bill eliminates the exemption from regulation for nonprofit cemetery authorities. The bill creates an exemption from regulation for cemetery authorities that are not required to be registered with the board.

ASSEMBLY BILL 547***Sale or encumbrance of cemetery land***

Under current law, before a cemetery authority may sell or encumber cemetery land, the cemetery authority must notify the board in writing of the proposed sale. The board has 60 days to object to the sale or encumbrance if the board determines that the cemetery authority will not be financially solvent or that the rights and interests of the cemetery lots and mausoleum spaces will not be adequately protected if the sale or encumbrance occurs. Current law provides an exemption from the notification requirement for a cemetery authority that is not required to be licensed and that is not organized or conducted for pecuniary profit. This bill exempts from the notification requirement a cemetery authority that is not required to be registered. This bill also eliminates the requirement that a cemetery authority may not be organized or conducted for pecuniary profit in order to be exempt from the notification requirement.

Regulation of warehouses

Under current law, DRL regulates warehouses; a “warehouse” is defined as a place of storage for cemetery merchandise sold under a preneed sales contract. Persons wishing to own or operate a warehouse must seek approval from DRL. A preneed seller who sells cemetery merchandise stored in a warehouse not located on the property of the preneed seller must provide the purchaser of a preneed sales contract with the name, address, and telephone number of the warehouse and inform the purchaser that the warehouse is approved by DRL. This bill transfers the regulation of warehouses to the board and requires a preneed seller who sells cemetery merchandise stored in a warehouse not located on the property of the preneed seller to inform the purchaser that the warehouse is approved by the board.

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

- 1 **SECTION 1.** 157.062 (9) of the statutes is amended to read:
- 2 157.062 (9) EXEMPTIONS FOR CERTAIN NONPROFIT CEMETERIES. In lieu of
- 3 delivering a certification, resolution, or copy of proceedings to the department of
- 4 financial institutions under sub. (1), (2), or (6) (b), a cemetery association that is not
- 5 required to be registered licensed under s. 440.91 (1) and ~~that is not organized or~~
- 6 ~~conducted for pecuniary profit or registered under s. 440.91 (1m)~~ shall deliver the
- 7 certification, resolution, or copy of proceedings to the office of the register of deeds
- 8 of the county in which the cemetery is located.
- 9 **SECTION 2.** 157.08 (5) of the statutes is amended to read:

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

5 **SECTION 3.** 157.11 (9g) (a) 1. c. of the statutes is amended to read:

6 157.11 (9g) (a) 1. c. If not invested as provided in subd. 1. a. or b., otherwise
7 deposited by the cemetery authority in an investment approved by the department
8 cemetery board if the care funds are segregated and invested separately from all
9 other moneys held by the cemetery authority.

10 **SECTION 4.** 157.19 (2) (b) to (d) of the statutes are amended to read:

11 157.19 (2) (b) The cemetery authority may not change the trustee of a care fund
12 under s. 157.11 (9g) that is deposited under this section or of a care fund under s.
13 157.12 (3), and the financial institution may not release any portion of the principal
14 amount of the care fund, without the department's cemetery board's written
15 approval.

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

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

4 (d) The department cemetery board shall promulgate rules establishing
5 reasonable requirements and standards for the approval of changes under pars. (b)
6 and (c). For approval of changes under par. (b), the rules shall require the cemetery
7 authority to submit evidence that the rights and interests of the beneficiary of the
8 care fund will be adequately protected if the change is approved. For approval of
9 changes under par. (c), the rules shall require the trustee to submit evidence that the
10 rights and interests of the purchaser under the preneed sales contract will be
11 adequately protected if the change is approved.

12 **SECTION 5.** 157.19 (4) (intro.) of the statutes is amended to read:

13 157.19 (4) (intro.) The department cemetery board may promulgate rules
14 allowing funds invested under this section to be deposited with a financial institution
15 located outside this state.

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

17 157.19 (5) (a) This section does not apply to care funds under s. 157.11 (9g) that
18 are deposited with a city or county as provided under s. 157.11 (9g) (a), to care funds
19 of a cemetery for which a certification under s. 157.63 is effective, to preneed trust
20 funds of a cemetery for which a certification under s. 440.92 (9) is effective, or to care
21 funds or preneed trust funds of a cemetery authority that is not required to be
22 licensed under s. 440.91 (1) ~~and that is not organized or conducted for pecuniary~~
23 ~~profit~~ or registered under s. 440.91 (1m).

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

ASSEMBLY BILL 547**SECTION 7**

1 157.19 (5) (b) If the department cemetery board determines that care funds
2 under s. 157.11 (9g) that have not been deposited with a city or county as provided
3 in s. 157.11 (9g) (a) are not being properly segregated from other moneys held by the
4 cemetery authority or that those care funds are not being properly invested as
5 required in s. 157.11 (9g) (a), the department cemetery board may require the
6 cemetery authority to deposit those care funds with a financial institution for
7 investment under this section.

8 **SECTION 8.** 157.62 (2) (a) and (c) of the statutes are amended to read:

9 157.62 (2) (a) Except as provided in ss. 157.625 and 157.63 (1), every cemetery
10 authority shall file an annual report with the department cemetery board. The
11 report shall be made on a form prescribed and furnished by the department cemetery
12 board. The report shall be made on a calendar-year basis unless the department
13 cemetery board, by rule, provides for other reporting periods. The report is due on
14 the 60th day after the last day of the reporting period.

15 (c) All records relating to accountings of trust funds described under par. (b) 3.
16 to 7. and maintained by the department and by the cemetery board are confidential
17 and are not available for inspection or copying under s. 19.35 (1).

18 **SECTION 9.** 157.625 (3) of the statutes is amended to read:

19 157.625 (3) Section 157.62 does not apply to a cemetery authority that is not
20 required to be licensed under s. 440.91 (1) ~~and that is not organized or conducted for~~
21 ~~pecuniary profit~~ or registered under s. 440.91 (1m).

22 **SECTION 10.** 440.08 (2) (a) 21m. of the statutes is created to read:

23 440.08 (2) (a) 21m. Cemetery authority, registered: December 15 of each
24 even-numbered year; \$10.

25 **SECTION 11.** 440.91 (1) (a) of the statutes is amended to read:

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1 440.91 (1) (a) Any cemetery authority that operates a cemetery that is 5 acres
2 or more in size, that sells 20 or more cemetery lots or mausoleum spaces at a cemetery
3 during a calendar year, or that has \$100,000 or more in ~~preneed~~ trust fund accounts
4 for a cemetery shall apply to the board for a license for that cemetery. A cemetery
5 authority that operates more than one cemetery shall apply for a separate license for
6 each cemetery that is 5 acres or more in size and for each cemetery at which it sells
7 20 or more burial spaces or at which it has \$100,000 or more in ~~preneed~~ trust fund
8 accounts.

9 **SECTION 12.** 440.91 (1) (c) of the statutes is amended to read:

10 440.91 (1) (c) 1. The renewal dates and renewal fees for licenses granted under
11 par. (b) are specified in s. 440.08 (2) (a), except that a licensed cemetery authority is
12 not required to renew its license if the cemetery authority sells less than 20 cemetery
13 lots or mausoleum spaces at a cemetery during a calendar year, or that has less than
14 \$100,000 in ~~preneed~~ trust fund accounts for a cemetery.

15 2. A licensed cemetery authority that is not required to renew its license under
16 subd. 1. shall renew the license if, during a period of 2 consecutive calendar years
17 that is subsequent to the period specified in subd. 1., the cemetery authority sells 20
18 or more cemetery lots or mausoleum spaces for a cemetery or has \$100,000 or more
19 in ~~preneed~~ trust fund accounts for a cemetery.

20 **SECTION 13.** 440.91 (1m) of the statutes is created to read:

21 440.91 (1m) (a) Except as provided in sub. (6m), any cemetery authority that
22 operates a cemetery that is less than 5 acres in size, that sells fewer than 20 cemetery
23 lots or mausoleum spaces at a cemetery during a calendar year, or that has less than
24 \$100,000 in trust fund accounts for a cemetery shall register with the board. A
25 cemetery authority that operates more than one cemetery shall submit a separate

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1 registration to the board for each cemetery that is less than 5 acres in size, that sells
2 fewer than 20 cemetery lots or mausoleum spaces at a cemetery during a calendar
3 year, or that has less than \$100,000 in trust fund accounts.

4 (b) The board shall register a cemetery authority if all of the following are
5 satisfied:

6 1. The cemetery authority submits an application for registration to the board
7 on a form provided by the board. The application shall require the cemetery
8 authority to provide the names and addresses of the officers of the cemetery
9 authority and to identify a business representative who is primarily responsible for
10 the cemetery authority's compliance with subch. II of ch. 157 and this subchapter.

11 2. The cemetery authority pays a \$10 fee to the board.

12 (c) The renewal date and renewal fee for a registration granted under par. (b)
13 are specified in s. 440.08 (2).

14 **SECTION 14.** 440.91 (6m) of the statutes is amended to read:

15 440.91 (6m) A cemetery authority of a cemetery organized, maintained and
16 operated by a town, village, city, church, synagogue or mosque, religious, fraternal
17 or benevolent society or incorporated college of a religious order is not required to be
18 licensed under sub. (1) or registered under sub. (1m).

19 **SECTION 15.** 440.92 (2) (a) 4. a. of the statutes is amended to read:

20 440.92 (2) (a) 4. a. At the time that the preneed sales contract is entered into,
21 the preneed seller shall provide the purchaser with the name, address and telephone
22 number of the warehouse and inform the purchaser that the warehouse is approved
23 by the department board.

24 **SECTION 16.** 440.92 (7) of the statutes is amended to read:

