

Clearinghouse Rule 07-050

DEPARTMENT OF REGULATION AND LICENSING
CEMETERY BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : CEMETERY BOARD
CEMETERY BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 07-)

PROPOSED ORDER

An order of the Cemetery Board to repeal chs. RL 50 and 51; and to create chs. CB 1 and 2 relating to the regulation of cemetery authorities, cemetery salespersons, and cemetery preneed sellers.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes interpreted:

Section 440.905, Stats.

Statutory authority:

Section 227.11 (2), Stats., and s. 440.905, Stats., as created by 2005 Wisconsin Act 25.

Explanation of agency authority:

The Cemetery Board is authorized to promulgate rules under s. 440.905, Stats., as created by 2005 Wisconsin Act 25.

Related statute or rule:

There are no other statutes or rules other than those listed above.

Plain language analysis:

Portions of the cemetery statutes were recently amended by the Legislature as a result of 2005 Wisconsin Act 25. The most notable change was the creation of a cemetery board. The board was given specific authority to promulgate rules relating to the regulation of cemetery authorities, cemetery salespersons, and cemetery preneed sellers. However,

these rules substantively mirror the prior rules that existed under the jurisdiction of the Department of Regulation and Licensing.

SECTION 1 sets forth the authority for the ch. CB 1 and also sets forth the requirements for becoming licensed as a cemetery authority, a cemetery preneed seller, and a cemetery salesperson. SECTION 1 also creates ch. CB 2 that sets forth the authority for the filing of cemetery annual reports. It also identifies the filing date as well as a filing exception for religious cemeteries.

SECTION 2 repeals chs. RL 50 and 51, which are being replaced with chs. CB 1 and 2. This change was necessary as a result of 2005 Wisconsin Act 25, which created a Cemetery Board and gave the board authority to promulgate rules relating to the regulation of cemetery authorities, cemetery salespersons, and preneed sellers.

Summary of, and comparison with, existing or federal regulation:

There is no existing or pending federal regulation relating to cemetery authorities, cemetery preneed sellers, and cemetery salespersons.

Comparison with rules in adjacent states:

Illinois:

Cemeteries are licensed and regulated by the Illinois Comptroller's Office. For more information see the Illinois website at: www.ioc.state.il.us/CemeteryCare/

Michigan:

Cemeteries are required to register and are regulated by the state Cemetery Commissioner. For more information see the Michigan website at: www.michigan.gov/commerciallicensing (then click on "Cemeteries")

Minnesota:

Statutes impose requirements for cemeteries, but licensure/regulation is not required. For more information see the Minnesota website at: www.ag.state.mn.us/

Iowa:

Cemeteries are required to register and are regulated by the Iowa Insurance Commissioner's Office. For more information see the Iowa website at: www.iid.state.ia.us

Summary of factual data and analytical methodologies:

No study resulting in the collection of factual data was used relating to this rule. The primary methodology for revising the rule is the board's analysis and determination that a rule change is necessary.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

The proposed rules would reflect the newly created statutory requirements that transferred authority relating to the regulation of cemetery authorities, cemetery salespersons, and cemetery preneed sellers from the department to the newly created Cemetery Board. The rules will merely be updated to reflect recent statutory changes that are already in effect. There are 98 cemetery authorities, 191 cemetery salespersons, and 181 cemetery preneed sellers currently licensed in Wisconsin. Of these licensees, a significant percentage of them are probably small businesses. This rule change will not have an effect on small business, however, as the rule changes will merely reflect the current statutory requirements.

Anticipated costs incurred by private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate:

The department estimates that the proposed rule will have no significant fiscal impact.

Effect on small business:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling (608) 266-8608.

Agency contact person:

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935. Telephone: (608) 266-0495. Email: pamela.haack@drl.state.wi.us.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before June 22, 2007 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chapters CB 1 and 2 are created to read:

Chapter CB 1

AUTHORITY AND APPLICATIONS FOR LICENSURE

CB 1.01 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2) and 440.905, Stats.

CB 1.02 Applications for cemetery authority, cemetery salesperson and preneed seller. (1) OTHER INFORMATION. In addition to the information which the board must require of applicants for registration as a cemetery authority, a cemetery salesperson or a preneed seller pursuant to ss. 440.91 and 440.92, Stats., the board may require all of the following:

(a) Information about any crimes committed by the applicant and any charges pending against the applicant.

(b) Information about any surrender, resignation, cancellation or denial of an application for a credential or any disciplinary action taken against a credential held by the applicant in Wisconsin or another licensing jurisdiction.

(c) Information about any disciplinary action pending against the applicant in any jurisdiction and relating to a credential held by the applicant.

(d) Information about any suits or claims ever having been filed against an applicant as a result of professional services rendered by the applicant in connection with cemetery operations.

(2) BASIS FOR DENIAL OF APPLICATION. The board may limit or deny an application for registration as a cemetery authority, cemetery salesperson or preneed seller for any of the grounds for which the department may discipline a credential holder under s. 440.93, Stats.

Chapter CB 2

FILING OF ANNUAL REPORTS BY CEMETERY AUTHORITIES AND PRENEED SELLERS

CB 2.01 Authority. This chapter is adopted pursuant to ss. 157.62 (2) and (7), 157.63, 227.11 (2) and 440.92 (6) (k), Stats.

CB 2.02 Filing of annual reports. Cemetery authorities required to file an annual report under s. 157.62 (2), Stats., and preneed sellers required to file an annual report under s. 440.92 (6), Stats., shall do so on or before March 1 of each year.

CB 2.03 Reporting period. The annual reports and certifications in lieu of annual reports shall be made on a calendar year basis unless the board, upon request, approved a different reporting period.

CB 2.04 Religious society exemption. A cemetery authority of a cemetery that is affiliated with a religious society organized under ch. 187, Stats., or that religious society may file a certification in lieu of an annual report under s. 157.63 or 440.92 (9), Stats. The certification shall be filed on or before the 60th day after the last day of the reporting period.

Note: Forms for the annual report and certification may be obtained upon request from and shall be filed with the Department of Regulation and Licensing, Division of Credentialing Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 2. Chs. RL 50 and 51 are repealed.

(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 _____ Agency _____
Chairperson
Cemetery Board

Chs CB 1, 2 CR07- (Cemetery board) Draft to CH 5-17-07