

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

Original Updated Corrected

Administrative Rule Chapter, Title and Number

CB 3-5 "Authority transfer," includes all rules in the former chs. RL 52-54

Subject

Warehouses storing cemetery pre-need merchandise, changing trustees of care or pre-need trust funds, and alternative care funds investments.

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Chapter 20 , Stats. Appropriations Affected

20.165 (1) (g)

Fiscal Effect of Implementing the Rule

No Fiscal Effect
 Indeterminate

Increase Existing Revenues
 Decrease Existing Revenues

Increase Costs
 Could Absorb Within Agency's Budget
 Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

State's Economy
 Local Government Units

Specific Businesses/Sectors
 Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

Policy Problem Addressed by the Rule

2007 Wisconsin Act 174, amending chs. 157 and 440, Stats., effective on April 9, 2008, transferred authority previously held by the former department of regulation and licensing, now the department of safety and professional services, to the cemetery board. The authority transferred regards regulation of warehouses storing cemetery pre-need merchandise, changes in trustees of care or pre-need trust funds, and alternative care funds investments. The cemetery board's rule-making proposal will implement the authority transfer, which will bring the regulations into compliance with their enabling statutes.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

These proposed rules implement legislation that has been in effect for several years. If there was any economic or fiscal impact on private businesses or public entities based on the transfer of authority for regulating the relevant activities, which is highly unlikely, it has long since been absorbed by such businesses and entities as a part of routine operations. The rules promulgated by this proposal will therefore have no current economic or fiscal impact on any of those entities.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The existing administrative rules regarding regulation of warehouses storing cemetery pre-need merchandise, changes in trustees of care or pre-need trust funds, and alternative care funds investments reflect the pre-Act 174 enabling statutes. Because the authority for administering such regulation, currently set forth in chs. SPS 52-54, no longer rests with the department, they are not consistent with the statutes. Chapters SPS 52-54 must therefore be renamed and renumbered; there is no alternative to making the proposed changes.

Long Range Implications of Implementing the Rule

The primary implication of the proposed rules, whether short- or long-term, is that they will correctly indicate the cemetery board, and not the department, as the authority for regulating warehouses storing cemetery pre-need merchandise, changes in trustees of care or pre-need trust funds, and alternative care funds investments. Indicating the correct authority will result in less confusion for those governed by the rules, as well as for department personnel charged with carrying out cemetery board decisions based on thereon.

Compare With Approaches Being Used by Federal Government

There are no existing or proposed federal regulations related to the regulatory areas of the proposed rules.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois:

The Illinois statutes, called the Illinois Compiled Statutes (ILCS), charge the state's Department of Financial and Professional Regulation (DFPR) with governing cemeteries pursuant to the Cemetery Oversight Act. The DFPR's powers include the authority to promulgate rules for the administration and enforcement of that Act. Section 225 ILCS 411/5-25. Licensed cemetery authorities may accept any gift or payment for the care of the cemetery or a cemetery lot to establish a trust fund for the specified purpose. Section 225 ILCS 411/15-5 (a). The cemetery authority acts as trustee of amounts received until depositing them with a corporate fiduciary. Section 225 ILCS 411/15-5 (b). Under s. 225 ILCS 620/1-5.05, "corporate fiduciary" means a trust company, such as a bank or other financial institution, or an individual or entity that has obtained a certificate of authority under the Corporate Fiduciary Act to exercise trust powers.

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3173&ChapterID=24>

The Illinois State Comptroller regulates pre-need contract salespersons, pre-need contracts, and cemetery care or pre-need trust funds under both the Illinois Funeral or Burial Funds Act, ch. 225 ILCS 45, and the Illinois Pre-Need Cemetery Sales Act, ch. 815 ILCS 390. A salesperson may change the trustee of pre-need trust funds upon no less than 30 days' prior notice to the Comptroller. Section 225 ILCS 45/2 (g). When a seller changes trustees, the trustee must provide written notice of the change to the Comptroller at least 28 days prior to the effective date of the change. Sections 225 ILCS 45/2 (g), 815 ILCS 390/16 (b).

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1302&ChapterID=24>

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2343&ChapterID=67>

Neither the Illinois Comptroller's administrative rules, nor those of the DPFR specifically address changes in trustees of cemetery care or pre-need trust funds. Title 38, Part 610, Ill. Admin. Code.

<http://www.ilga.gov/commission/jcar/admincode/038/03800600sections.html>,

<http://www.ilga.gov/commission/jcar/admincode/038/03800610sections.html>,

<http://www.ilga.gov/commission/jcar/admincode/068/068parts.html>

Iowa:

In Iowa, the commissioner of insurance regulates cemeteries and funeral merchandise and services under the Funeral Merchandise and Funeral Merchandise Act and the Iowa Cemetery Act. Sections 523A.801, 523I.201, Iowa Code. The commissioner of insurance is an officer in the insurance division of Iowa's department of commerce. Section 505.1, Iowa Code. A seller of cemetery or funeral merchandise, or funeral services must deposit any moneys paid by the purchaser into a trust fund that the seller has previously established for such purposes. Section 523A.201.

Cemeteries may sell interment rights, merchandise related to the final disposition of human remains, or memorial or special care, and may or may not place moneys received from such sales in a trust fund. Section 523I.102 4., 20., 28., 47. Perpetual care cemeteries must maintain an irrevocable trust fund for the general care of a cemetery. The care fund trust must provide for the appointment of initial and successor trustees. Sections 523I.806 1., 523I.809 1., Iowa Code. A trustee for care funds may, but need not, be a

financial institution. The cemetery may transfer care funds from one financial institution to another. Section 523I.810 1. a., 3., Iowa Code. The care fund's trustee may hold money or property designated for the special care of a particular interment space, or cemetery section or building as specified by the purchaser. Section 523I.804 4., Iowa Code.

<http://search.legis.state.ia.us/nxt/gateway.dll?f=templates&fn=default.htm>,

<http://search.legis.state.ia.us/nxt/gateway.dll?f=templates&fn=default.htm>

Iowa's administrative rules regulating cemeteries are located at ch. 191—18, Iowa Admin. Code. Section 191-18.1. (2) of the code reiterates the provisions regarding a care funds trusted stated in ss. 523I.806-.810, Iowa Code. Rules associated with the Cemetery and Funeral Merchandise and Funeral Services Act found at chs. 191—101-102, Iowa Administrative Code.

<http://search.legis.state.ia.us/nxt/gateway.dll/ar/iac?f=templates&fn=default.htm>,

<http://search.legis.state.ia.us/nxt/gateway.dll?f=templates&fn=default.htm>

Michigan:

In Michigan, ownership and operation of cemeteries is regulated by the Cemetery Commissioner, an officer in the Department of Licensing and Regulatory Affairs (LARA), formerly the Department of Labor and Economic Growth. Michigan Compiled Laws (MCL) 456.522, s. 2. (k). Cemeteries are required to establish and maintain an irrevocable endowment and perpetual care trust fund with one or more financial institution that will serve as trustee for the portion of the fund allocated to it. A cemetery may remove and replace a trustee at any time, subject to the consent of the commissioner and to the trustee agreement. MCL 456.536 s. 16 (4).

<http://legislature.mi.gov/doc.aspx?mcl-Act-251-of-1968>

LARA administers the Prepaid Funeral and Cemetery Sales Act, under which it registers sellers and providers of funeral or cemetery services or merchandise sold pursuant to prepaid contracts, and regulates such contracts. MCL 328.213 s. 3. (o), 328.215 s. 5. (d), 328.216. All funds received pursuant to prepaid contracts must be held in escrow by an escrow agent for the benefit of the contract beneficiary. MCL 328.222 s. 12. (1). The statutes specify with particularity, based on whether the contract price is guaranteed or non-guaranteed, who or what entity may serve as the escrow agent: if non-guaranteed, either the contract seller or provider, or another of the seller's or provider's choice; if either guaranteed or non-guaranteed, a depository, a trust company, a non-profit corporation or association of at least 250 funeral establishments, or a non-profit of at least 30 cemeteries; if guaranteed and includes funeral services, selected by the provider of those services; if guaranteed and no funeral services, selected by any provider that is a party to the contract. Contract sellers and providers may not serve as the escrow agent for guaranteed price contracts. MCL 328.222 s. 12. (4) (b), (5). Providers and escrow agents may change the escrow depository at any time and with or without cause, without the approval of any other party. The contract buyer must be notified of a change of depository or escrow agent. MCL 328.224 s.14. (3).

<http://legislature.mi.gov/doc.aspx?mcl-Act-255-of-1986>

The cemetery commissioner's administrative rules are codified at R 456.101-.196, Mich. Admin. Code. These rules contain provisions related to endowed care funds, but they do not discuss changes of trustees for such funds.

http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=45600101&Dpt=LG&RngHigh=

The administrative rules corresponding to the Michigan Prepaid Funeral and Cemetery Sales Act are found at R 339.11-.47, Mich. Admin. Code. Although various of the rules therein reference the escrow, deposit, and investment of moneys received for cemetery merchandise, none directly address changes in escrow agents.

http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=33900011&Dpt=&RngHigh=33923405

Minnesota:

Cemeteries in Minnesota may be either public or private. The ownership and operation of a public cemetery is governed by either a corporation or association formed for such purposes, and must provide for

the appointment of at least three board members or trustees. Section 306.02, Minn. Stats. A cemetery association may establish a permanent fund for the general care, maintenance, and improvement of the cemetery. Section 306.31, Minn. Stats. The association must either appoint a board of trustees for the fund, consisting of not less than three and not greater than five resident landowners, or designate a trust company within the state. Section 306.32, Minn. Stats. Trustees are appointed for life except if a trust company, which may be replaced by a board of trustees or another trust company, as the association trustees see fit. Section 306.32, Minn. Stats.

https://www.revisor.mn.gov/statutes/?id=306&view=chapter&year=2011&keyword_type=all&keyword=cemetery&format=pdf,

The total of all moneys paid pursuant to a contract for the preneed purchase of burial goods, or funeral or burial services must be held in trust with a Minnesota financial institution until performance of the terms of the contract upon the death of the trust's beneficiary. Unless otherwise specified by the purchaser, the trust must be revocable in its entirety. 149A.97, subd. 3., Minn. Stats. Such trusts must be carried in a separate account for the depositor funeral provider and the purchaser are the named trustees. The purchaser may at any time prior the death of the beneficiary designate another trustee. 149A.97, subd. 3a. (8), subd. 4. Minn. Stats.

https://www.revisor.mn.gov/statutes/?id=149A&view=chapter&year=2011&keyword_type=all&keyword=cemetery&format=pdf

Minnesota has no administrative rules related to cemetery care other than those regulating the construction of new care facilities, 4660.1200, Minn. Admin. Rules; charitable, religious, or educational organizations, including their tax exempt status, 8130.6200, Minn. Admin. Rules; and caskets, burial vaults, and urns for cremains used for human burial, 8130.6300, Minn. Admin. Rules. No rules address trust funds or changes of trustees thereof.

https://www.revisor.mn.gov/rules/?id=4660.1200&keyword_type=all&keyword=cemetery+care,

https://www.revisor.mn.gov/rules/?id=8130.6200&keyword_type=all&keyword=cemetery,

https://www.revisor.mn.gov/rules/?id=8130.6300&keyword_type=all&keyword=cemetery

A search of the Minnesota Administrative Rules for regulation of preneed or prepaid merchandise or services produced no results. 8130.6200

https://www.revisor.mn.gov/search/doc_result.php?search=all&keyword_type=all&keyword=pre-need+preneed+prepaid+&stat_year1=2011&stat_year2=2011&stat_chapter=&laws_session1=87&laws_session2=87&laws_chapter=&laws_display=art&rule=1&rule_year1=2010&rule_year2=2010&rule_chapter=&rule_agency%5B%5D=&court_year1=2010&court_year2=2010&court_type%5B%5D=&submit_keyword=GO

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