

STATE OF WISCONSIN
CEMETERY BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : CEMETERY BOARD
CEMETERY BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 20-034)

PROPOSED ORDER

An order of the Cemetery Board to amend CB 1.01 and 1.02 (1) (a); to repeal and recreate CB 1.015; and to create CB 1.013 and 1.03; relating to applications for cemetery preneed seller and cemetery salesperson credentials.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss. 111.321, 111.322, 111.335, and 440.09 (2), Stats.

Statutory authority: ss. 227.11 (2) (a) and 440.09 (5), Stats.

Explanation of agency authority:

Section 227.11 (2) (a), Stats., “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute...”

Section 440.09 (5), Stats., allows the board to promulgate rules necessary to implement the changes to 440.09 (2) enacted by 2019 Wisconsin Act 143.

Related statute or rule: None.

Plain language analysis:

This rule project updates CB 1 by creating CB 1.03 to implement 2019 Wisconsin Act 143. Act 143 requires the board to grant a reciprocal credential to an applicant who meets the following criteria:

- Completes an application.
- Pays the required application fee.
- Resides in the state.
- Is either a service member, former service member discharged other than dishonorably within the last four years, or spouse of a service member or former service member discharged other than dishonorably within the last four years.

- Holds a credential in another jurisdiction that qualifies the individual to perform the acts authorized under the appropriate credential granted by the department or credentialing board.

The rule project also revises CB 1 to implement 2017 Wisconsin Act 278. CB 1.02 (1) (a) is revised to clarify that an applicant must submit documentation necessary for the board determine whether the applicant has certain pending charges (not simply an arrest record) or convictions that are substantially related to the practice of cemetery sales.

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

None.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:

N/A.

Comparison with rules in adjacent states:

Illinois:

Illinois state law does have a process allowing for expedited issuance of reciprocal credentials for active service members, their spouses, and those who were discharged from the service within the last two years. An applicant must show that they have a credential in good standing in another jurisdiction that is substantially equivalent to the Illinois credential sought, and must submit all required fees and application documents. The credential must be issued within 60 days of receipt of a completed application (20 ILCS 5/5-715).

Applicants for licensure as a cemetery manager or a cemetery customer service employee must not have been convicted in the last 10 years of a Class X felony, or any other felony involving fraud or dishonesty as an essential element (225 ILCS 411/10-21 (b) (7)).

Iowa:

Iowa generally requires the expedited review of reciprocal license applications for veterans as defined under Iowa law, as long as the board determines the individual is licensed in another jurisdiction and the requirements to obtain that license are substantially equivalent to the requirements to obtain the license in Iowa. If the requirements are not substantially equivalent, the applicant may receive a provisional license to allow practice while meeting remaining requirements for equivalency (IA Stats. § 272C.4 (12)). This statute is applicable to credentialing boards, which does not expressly include the Iowa Commissioner of Insurance. The commission does have the statutory authority under state law to promulgate rules accepting out of state preneed and

sales credentials, however it does not appear to have exercised this authority to date (IA Stats. § 523A.102).

Iowa law allows for the denial of a preneed or cemetery salesperson credential if the applicant has violated any state or federal law, including tax or public health laws, if the violation is applicable to the conduct of business as a cemetery preneed or cemetery salesperson. Further, criminal convictions (plea or finding of guilt) for crimes relating to dishonesty or false statements may result in denial of the issuance of a license or its renewal (191 IAC §§ 100.40 (2) (c) and 100.13 (2)). The Iowa Commissioner of Insurance must request the criminal history of an applicant, and the applicant must agree to submit to a background check (IA Stats. § 523A.102).

Michigan:

Michigan provides for a temporary credential to be issued to active duty military and spouses if they hold a credential in another state in good standing that allows for the practice of the profession they are seeking licensure for. This temporary credential is good for at least 6 months and can be extended if the person needs more time to meet licensing requirements (MI Stats. § 339.213).

Individuals registered to sell prepaid cemetery services in Michigan must be “of good moral character” (MCL § 338.41). The agency may consider a judgment of guilt in a criminal prosecution or a judgment in a civil action in determining whether an individual is of good moral character. The individual can provide evidence showing that “at the current time he or she has the ability to, and is likely to, serve the public in a fair, honest, and open manner, that he or she is rehabilitated, or that the substance of the former offense is not reasonably related to the occupation or profession for which he or she is seeking a license” (MCL § 338.42).

Minnesota:

Chapter 306 MN Statutes regulates cemeteries. There do not appear to be licensing requirements for individuals wishing to sell cemetery plots or merchandise.

Generally, Minnesota does require each licensing board to promulgate rules allowing for expedited temporary credentials to be issued to service members, former service members discharged in the last two years, and their spouses. Applicants must show a valid credential issued by another jurisdiction, without history of disciplinary action, and must pass a background check. The applicant must complete all application requirements during the life of the temporary credential (Minn. Stats. § 197.4552).

Summary of factual data and analytical methodologies:

The board considered the necessity of implementing the statutory changes created by 2017 Act 278 and 2019 Act 143 in drafting this rule, and made the revisions to its rules necessary to implement these legislative changes.

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

The rule was posted on the department’s website for 14 days to solicit information from the public on the possible economic impact of the proposed rule. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

None.

Agency contact person:

Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0955; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing to be held at 9:00 AM on November 3, 2020 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. CB 1.01 is amended to read:

CB 1.01 The rules in this chapter are adopted pursuant to ss. 227.11 (2), 440.09, and 440.905, Stats.

SECTION 2. CB 1.013 is created to read:

CB 1.013 Definitions; generally. As used in chs. CB 1 to 6, “board” means the cemetery board.

SECTION 3. CB 1.015 is repealed and recreated to read:

CB 1.015 Definitions; this chapter. As used in this chapter:

(1) "Former service member" has the meaning in s. 440.09 (1) (a), Stats.

(2) "Service member" has the meaning in s. 440.09 (1) (b), Stats.

(3) "Spouse" has the meaning in s. 440.09 (1) (c), Stats.

SECTION 4. CB 1.02 (1) (a) is amended to read:

CB 1.02 (1) (a) Information about any ~~crimes committed by the applicant~~
~~and any charges pending against the applicant~~ criminal convictions or pending charges
against the applicant.

SECTION 5. CB 1.03 is created to read:

CB 1.03 Reciprocal credentials for servicemembers, former servicemembers, and spouses. A reciprocal preneed seller or cemetery salesperson credential shall be granted to a service member, former service member, or the spouse of a service member or former service member who the board determines meets all of the requirements under s. 440.09 (2), Stats. Subject to s. 440.09 (2m), Stats., the board may request verification necessary to make a determination under this subsection.

SECTION 6. EFFECTIVE DATE. 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.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Chairperson of the Board
Cemetery Board