

Notice of Hearing

The Cemetery Board announces that it will hold a public hearing on a permanent rule for CB 1, relating to applications for cemetery preneed seller and cemetery salesperson credentials, at the time and place shown below.

Hearing Information

Date: November 3, 2020

Time: 9:00 AM

Location: 4822 Madison Yards Way, Room N208
Madison, Wisconsin

Virtual meeting—Connection information will be posted in advance of the hearing at the following webpage:

<https://dsps.wi.gov/Pages/RulesStatutes/PublicHearingComments.aspx>

Appearances at the Hearing and Submittal of Written Comments

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 9:30 AM on November 3, 2020 to be included in the record of rule-making proceedings.

The rule may be reviewed and comments made at:

<http://docs.legis.wisconsin.gov/code/chr/hearings>.

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).

Agency Small Business Regulatory Coordinator

Daniel Hereth, Daniel.Hereth@wisconsin.gov, (608) 267-2435

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 TBD)

PROPOSED ORDER

An order of the Cemetery Board to amend CB 1.02 (1) (a) and to create CB 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: Sections 111.321, 111.322, 111.335, and 440.09 (2), Stats.

Statutory authority: Sections 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 are 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 9:30 AM on November 3, 2020 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. 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.~~ for the board to make a determination as to whether the applicant has been convicted of a crime that is substantially related to the sale of a cemetery lot, cemetery merchandise, or mausoleum space, subject to ss. 111.321, 111.322, and 111.335, Stats.

SECTION 2. 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 3. 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)

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date August 27, 2020</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) CB 1</p>	
<p>4. Subject Application requirements for preneed seller and cemetery salesperson credentials.</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected 20.165(1)(g)</p>
<p>7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule This rule project updates ch. CB 1 by creating s. CB 1.03 to implement 2019 Wisconsin Act 143. Act 143 requires the board to grant a reciprocal credential to a service member, former service member, or their spouse, if they have been discharged other than dishonorably within the last four years, and hold a credential in good standing in another state that authorizes the individual to perform the activities under the credential issued by the credentialing authority. The rule project also revises ch. CB 1 to implement 2017 Wisconsin Act 278. Section CB 1.02 (1) (a) is revised to clarify that an applicant must submit documentation necessary for the board determine whether the applicant has criminal convictions that are substantially related to the practice of cemetery sales.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The rule was posted on the department's website for 14 days to solicit economic impact comments from businesses, business sectors, associations representing business, local governmental units, and individuals. No comments were received.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local governmental units submitted comments during the economic impact comment period.</p>	
<p>14. 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) None.</p>	
<p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit of implementing the rule will be to bring the board's rules into compliance with state law, and to ensure that service members, former servicemembers, and their spouses are able to obtain a reciprocal credential and begin working in Wisconsin. The update will also ensure that the rules and statutes governing cemetery sales are consistent and clear for stakeholders. The alternative to implementing the rule is to leave the board's rules out of compliance with state statute.</p>	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

16. Long Range Implications of Implementing the Rule

The long range implications of implementing the rule will be to ensure that the board's rules conform to statutory requirements and are more clear and user friendly for stakeholders.

17. Compare With Approaches Being Used by Federal Government

None.

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

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).

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ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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19. Contact Name	20. Contact Phone Number
Jon Derenne, Administrative Rules Coordinator	(608) 266-0955

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-