



**VIRTUAL/TELECONFERENCE
CEMETERY BOARD
Virtual, 4822 Madison Yards Way, Madison
Contact: Christian Albouras (608) 266-2112
August 11, 2020**

The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a description of the actions of the Board.

AGENDA

9:30 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

A. Adoption of Agenda (1-3)

B. Approval of Minutes of May 12, 2020 (4-5)

C. Introductions, Announcements, and Recognition

D. Conflicts of Interest

E. Administrative Matters – Discussion and Consideration

- 1) Department, Staff and Board Updates
- 2) Appointment of Liaisons and Alternates
- 3) Board Members – Term Expiration Dates
 - a. Patricia Grathen – 7/1/2022
 - b. Francis Groh – 7/1/2020
 - c. Glen Porter – 7/1/2023
 - d. John Reinemann – 7/1/2020
 - e. Bernard Schroedl – 7/1/2021
 - f. Lloyd Shepherd – 7/1/2024

F. Administrative Rule Matters – Discussion and Consideration (6-7)

- 1) Adoption Order for CR-19-150 Relating to Mausoleums **(8-13)**
- 2) Adoption Order for CR 19-149 Relating to Change of Trustee of Care Funds and Preneed Trust Funds **(14-17)**
- 3) Adoption Order for CR 19-148 Relating to Maintenance of Burial Records **(18-20)**
- 4) Preliminary Rule Draft for CB 1 Relating to Applications for Credentials **(21-25)**
- 5) Pending and Possible Rulemaking Projects

G. COVID-19 – Discussion and Consideration

H. Discussion and Consideration of Items Added After Preparation of Agenda

- 1) Introductions, Announcements and Recognition
- 2) Administrative Matters
- 3) Election of Officers
- 4) Appointment of Liaisons and Alternates
- 5) Delegation of Authorities
- 6) Education and Examination Matters
- 7) Credentialing Matters
- 8) Practice Matters
- 9) Administrative Rule Matters
- 10) Legislative and Policy Matters
- 11) Liaison Reports
- 12) Board Liaison Training and Appointment of Mentors
- 13) Informational Items
- 14) Division of Legal Services and Compliance (DLSC) Matters
- 15) Presentations of Petitions for Summary Suspension
- 16) Petitions for Designation of Hearing Examiner
- 17) Presentation of Stipulations, Final Decisions and Orders
- 18) Presentation of Proposed Final Decision and Orders
- 19) Presentation of Interim Orders
- 20) Petitions for Re-Hearing
- 21) Petitions for Assessments
- 22) Petitions to Vacate Orders
- 23) Requests for Disciplinary Proceeding Presentations
- 24) Motions
- 25) Petitions
- 26) Appearances from Requests Received or Renewed
- 27) Speaking Engagements, Travel, or Public Relation Requests, and Reports

I. Public Comments

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85(1)(b), and 440.205, Stats.); to consider individual histories or disciplinary data (s. 19.85(1)(f), Stats.); and to confer with legal counsel (s. 19.85(1)(g), Stats.).

J. Deliberation of Items Added After Preparation of the Agenda

- 1) Education and Examination Matters
- 2) Credentialing Matters
- 3) DLSC Matters
- 4) Monitoring Matters
- 5) Professional Assistance Procedure (PAP) Matters
- 6) Petitions for Summary Suspensions
- 7) Petitions for Designation of Hearing Examiner
- 8) Proposed Stipulations, Final Decisions and Orders
- 9) Proposed Interim Orders
- 10) Administrative Warnings
- 11) Review of Administrative Warnings

- 12) Proposed Final Decisions and Orders
- 13) Matters Relating to Costs/Orders Fixing Costs
- 14) Case Closings
- 15) Board Liaison Training
- 16) Petitions for Assessments and Evaluations
- 17) Petitions to Vacate Orders
- 18) Remedial Education Cases
- 19) Motions
- 20) Petitions for Re-Hearing
- 21) Appearances from Requests Received or Renewed

K. Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

L. Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

M. Open Session Items Noticed Above Not Completed in the Initial Open Session

ADJOURNMENT

NEXT MEETING: NOVEMBER 3, 2020

MEETINGS AND HEARINGS ARE OPEN TO THE PUBLIC, AND MAY BE CANCELLED WITHOUT NOTICE.

Times listed for meeting items are approximate and depend on the length of discussion and voting. All meetings are held at 4822 Madison Yards Way, Madison, Wisconsin, unless otherwise noted. In order to confirm a meeting or to request a complete copy of the board's agenda, please call the listed contact person. The board may also consider materials or items filed after the transmission of this notice. Times listed for the commencement of disciplinary hearings may be changed by the examiner for the convenience of the parties. Interpreters for the hearing impaired provided upon request by contacting the Affirmative Action Officer at 608-266-2112 or the Meeting Staff at 608-266-5439.

**CEMETERY BOARD TELECONFERENCE
MEETING MINUTES
MAY 12, 2020**

PRESENT: Patricia Grathen, Francis Groh, E. Glen Porter, John Reinemann, Lloyd Shepherd
(*joined at 10:07 a.m.*)

EXCUSED: Bernard Schroedl

STAFF: Christian Albouras, Executive Director; Jameson Whitney, Legal Counsel; Megan Glaeser, Bureau Assistant and other Department staff

CALL TO ORDER

Francis Groh, Chairperson, called the meeting to order at 9:33 a.m. A quorum was confirmed with four (4) board members present.

ADOPTION OF AGENDA

MOTION: Patricia Grathen moved, seconded by John Reinemann, to approve the Agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES OF JANUARY 21, 2020

MOTION: Francis Groh moved, seconded by Patricia Grathen, to approve the Minutes of January 21, 2020 as published. Motion carried unanimously.

ADMINISTRATIVE RULE MATTERS

Scope Statement for CB 1, Relating to Applications for Cemetery Authority, Cemetery Salesperson, and Preneed Seller Credentials

MOTION: Patricia Grathen moved, seconded by Francis Groh, to approve the Scope Statement revising rule citation CB1, relating to Applications for Cemetery Authority, Cemetery Salesperson, and Preneed Seller Credentials, for submission to the Department of Administration and Governor's Office and for publication. Additionally, the Board authorizes the Chairperson to approve the Scope Statement for implementation no less than 10 days after publication. Motion carried unanimously.

(*Lloyd Shepherd joined at 10:07 a.m.*)

CONVENE TO CLOSED SESSION

MOTION: Francis Groh moved, seconded by Patricia Grathen, to convene to closed session to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85 (1)(b), and 440.205, Stats.); to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.); and to confer with legal counsel

(s. 19.85(1)(g), Stats.). Francis Groh, Chairperson, read the language of the motion. The vote of each member was ascertained by voice vote. Roll Call Vote: Patricia Grathen-yes; Francis Groh-yes; E. Glen Porter-yes; John Reinemann-yes; and Lloyd Shepherd-yes. Motion carried unanimously.

The Board convened into Closed Session at 10:51 a.m.

DELIBERATION ON DLSC MATTERS

Administrative Warnings

17 RLC 011 – L.V.C.

MOTION: Francis Groh moved, seconded by Patricia Grathen, to issue an Administrative Warning in the matter of L.V.C., DLSC Case Number 17 RLC 011. Motion carried unanimously.

Case Closing

18 RLC 009 – V.M.P.

MOTION: Francis Groh moved, seconded by Patricia Grathen, to close DLSC Case Number 18 RLC 009, against V.M.P., for Prosecutorial Discretion (P1). Motion carried unanimously.

RECONVENE TO OPEN SESSION

MOTION: Patricia Grathen moved, seconded by John Reinemann, to reconvene in open session. Motion carried unanimously.

The Board reconvened into Open Session at 11:21 a.m.

VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION, IF VOTING IS APPROPRIATE

MOTION: Francis Groh moved, seconded by John Reinemann, to affirm all motions made and votes taken in Closed Session. Motion carried unanimously.

(Be advised that any recusals or abstentions reflected in the closed session motions stand for the purposes of the affirmation vote.)

ADJOURNMENT

MOTION: Patricia Grathen moved, seconded by Francis Groh, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 11:25 a.m.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Jon Derenne, Administrative Rules Coordinator		2) Date when request submitted: July 28, 2020 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>	
3) Name of Board, Committee, Council, Sections: Cemetery Board			
4) Meeting Date: August 11, 2020	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? 1. Adoption order for CR 19-150 relating to mausoleums. 2. Adoption order for CR 19-149 relating to change of trustee of care funds and preneed trust funds. 3. Adoption order for CR 19-148 relating to maintenance of burial records. 4. Preliminary rule draft for CB 1 relating to applications for credentials.	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <i>(If yes, please complete Appearance Request for Non-DSPS Staff)</i> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed:			
11) Authorization			
<i>Jon Derenne</i>		July 28, 2020	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

**State of Wisconsin
Department of Safety & Professional Services**

STATE OF WISCONSIN
CEMETERY BOARD

IN THE MATTER OF RULEMAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : CEMETERY BOARD
CEMETERY BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 19-150)

ORDER

An order of the Cemetery Board to amend CB 6.07 (1) and (2) and 6.08; and to create CB 6.02 (3) and 6.085 relating to mausoleums.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Sections 157.12 (2) (b) and (3) (a), Stats.

Statutory authority: Sections 157.12 (2) (a), 157.12 (3) (a) 3. and 440.905 (2), Stats.

Explanation of agency authority:

Section 440.905 (2), Stats., provides “[t]he board has rule-making authority and may promulgate rules relating to the regulation of cemetery authorities, cemetery salespersons, and cemetery preneed sellers...”

Section 157.12 (3) (a) 3., Stats., provides “...The municipality in which mausoleum is located may, by ordinance, require a larger fund, but only if the cemetery board notifies the municipality in writing that the cemetery board approves of the requirement. The cemetery board may promulgate rules establishing uniform standards for approvals under this subdivision.”

Related statute or rule: None.

Plain language analysis: This rule project will amend ss. CB 6.07 and 6.08 to revise references to “progress reports” to instead reference “temporary certification” in order to be consistent with the terminology used in statute. Section CB 6.07 will also be revised to clarify that in order to obtain temporary certification status, the minor defects in question must not be structural defects.

Further, s. CB 6.08 will also be revised to bring the rule into conformity with state statute and allow for the sale of mausoleum space and the burial of human remains while a mausoleum has temporary certification status.

Finally, the project creates a uniform procedure for municipalities to request, and criteria for the Cemetery Board to use when deciding whether to approve an ordinance under s. 157.12 (3) (a) 3., Stats., requiring a larger mausoleum care fund than what is required by s. 157.12 (3) (a) 1. and 2., Stats.

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

The federal government does not regulate mausoleum construction or care funds.

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:

The Cemetery Board held a preliminary hearing on the statement of scope for this rule at its August 20, 2019 meeting. No comments were received.

Comparison with rules in adjacent states:

Illinois: Illinois requires that fifty percent of the proceeds of sales of undeveloped spaces, be deposited into a preneed trust fund (815 ILCS 390/15 (a)). Sellers of undeveloped space are required to maintain temporary burial facilities for those who die prior to completion of the space (Id. at (d)).

Illinois law does not require the establishment of care funds for mausoleums. However, if a cemetery authority requires the establishment of a care fund, or a deposit to an existing care fund as a condition of the sale of a plot, the cemetery authority is required by law to deposit certain percentages of the sale into the care fund:

1. For interment rights, \$1 per square foot of the space sold or fifteen percent of the sales price or imputed value, whichever is the greater, with a minimum of \$25 for each individual interment right.
2. For entombment rights, not less than ten percent of the sales price or imputed value with a minimum of \$25 for each individual entombment right.
3. For inurnment rights, not less than ten percent of the sales price or imputed value with a minimum of \$15 for each individual inurnment right.
4. For any transfer of interment rights, entombment rights, or inurnment rights recorded in the records of the cemetery authority, excepting only transfers between members of the immediate family of the transferor, a minimum of \$25 for each such right transferred. For the purposes of this paragraph “immediate family of the transferor” means the spouse, parents, grandparents, children, grandchildren, and siblings of the transferor.
5. Upon an interment, entombment, or inurnment in a grave, crypt, or niche in which rights of interment, entombment, or inurnment were originally acquired from a cemetery authority prior to January 1, 1948, a minimum of \$25 for each such right exercised.
6. For the special care of any lot, grave, crypt, or niche or of a family mausoleum, memorial, marker, or monument, the full amount received (760 ILCS 100/4).

Illinois does not appear to provide municipalities with the option of requiring greater deposits.

Iowa: Iowa law requires that an amount equal to or greater than \$50 or twenty percent of the gross selling price received by the cemetery for each sale of interment rights, whichever is greater, must be deposited into a care fund for the cemetery's perpetual care (IA Code s. 523I.807 (1)). Iowa does not appear to specifically provide that a municipality may require a greater deposit. Iowa does not allow for the sale of interment rights in a mausoleum that will be completed in the future unless the commissioner has approved the cemetery authority to make sales. The cemetery authority is required to submit a notification to the cemetery commissioner for approval including the following information:

- a. A description of the new facility or the proposed expansion, including a description of the interment rights to be offered to prospective purchasers.
- b. A statement of the financial resources available for the project.
- c. A copy of the proposed interment rights agreement to be used, which shall include the following:
 - (1) That purchase payments will be held in trust in accordance with the requirements of chapter 523A until construction of the mausoleum or columbarium is complete.
 - (2) That the purchaser may request a refund of the purchase amount, if construction does not begin within five years of the purchaser's first payment.
 - (3) That the new facility will operate as a perpetual care cemetery in compliance with this chapter, even if the facility is located at a nonperpetual care cemetery.
 - (4) That the purchaser will receive an ownership certificate upon payment in full or, if later, when construction is complete.

(IA Code s. 523I.314).

Michigan: Preconstruction sales of crypts or niches in a mausoleum or columbarium are prohibited unless the cemetery authority does one of the following:

- (a) Agrees to complete the mausoleum or columbarium within 4 years after the date of the first sale of an entombment or inurnment right in the proposed mausoleum or columbarium or, if construction is not completed within that time and upon the request of the purchaser, agrees to offer to the purchaser a refund of 100% of the purchase price with interest calculated at the rate of 4% per annum. Or,
- (b) Agrees that if the person for whom the entombment or inurnment right in the proposed mausoleum or columbarium dies before completion of the mausoleum or columbarium, an alternative disposition of the remains shall be provided until completion of the mausoleum or columbarium or until a refund is made of one hundred percent of the purchase price with interest calculated at the rate of 4% per annum. (MCL s. 456.536a).

Michigan law requires the establishment of a perpetual care fund of \$50,000 before any sales may be made. Each month thereafter, the cemetery must deposit not less than

fifteen percent of its proceeds received from the sales of burial rights, entombment rights, or columbarium rights (MCL 456.536 (5) and (6)). Michigan does not appear to have a specific provision allowing individual municipalities to increase the required deposit percentage.

Minnesota: Cemetery authorities may sell burial space in a mausoleum or columbarium prior to completion if they have obtained a performance bond sufficient to cover all construction costs associated with building the mausoleum or columbarium at the time of sale (Minn. Stats. s. 306.90). Minnesota law requires that cemetery authorities deposit ten percent of the proceeds of all sales of mausoleum burial spaces into the cemetery's permanent care and improvement fund. Minnesota does not appear to have a specific provision allowing individual municipalities to increase the required deposit percentage.

Summary of factual data and analytical methodologies:

The cemetery board reviewed its rules in advance of its report pursuant to s. 227.29, Stats. The changes in this rule project were deemed necessary to bring the rules into compliance with state law; to enhance the clarity of the rules; and to provide better guidance to stakeholders.

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

The rule was posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis are attached.

Effect on small business:

These proposed rules do not have an 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 Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

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.

TEXT OF RULE

SECTION 1. CB 6.02 (3) is created to read:

CB 6.02 (3) “Temporary certification” means a contingent approval issued by the board where, following an initial inspection, the board determines that the mausoleum only contains minor, non-structural defects; and is valid for a period determined by the board, but not to exceed six months.

SECTION 1. CB 6.07 (1) and (2) are amended to read:

CB 6.07 (1) If the board or its designee determines that, except for certain minor non-structural defects, the construction, alteration, or conversion complies with the approved plans, the board or its designee may provide the cemetery authority with a ~~written progress report~~ temporary certification that is contingent on the correction of those minor defects.

(2) If a cemetery authority with a ~~progress report~~ temporary certification notifies the board or its designee in writing before the expiration date of the temporary certification that the defects in the construction, alteration, or conversion of the public mausoleum have been corrected, the board or its designee shall, within 30 days after receiving the notice, reinspect the public mausoleum and provide the cemetery authority with a final inspection report as to whether the construction, alteration, or conversion complies with the approved plans.

SECTION 2. CB 6.08 is amended to read:

CB 6.08 Mausoleum sales. No person may sell a mausoleum space, except an undeveloped space that is sold in accordance with s. 440.92, Stats., or bury human remains in the public mausoleum until either the board has issued a temporary certification that the mausoleum contains only minor, non-structural defects, or all inspection defects are corrected and the board or its designee reinspects the public mausoleum and provides the cemetery authority with a final inspection report that indicates the construction, alteration, or conversion complies with the approved plans.

SECTION 3. CB 6.085 is created to read:

CB 6.085 Municipal requests for larger mausoleum care funds. A municipality may require by ordinance, with the written approval of the board, that cemetery authorities within its jurisdiction maintain a larger mausoleum care fund than what is required under s. 157.12 (3) (a) 1. and 2, Stats. The board may issue a written approval of such an ordinance if:

- (1)** The municipality submits a request to the board containing the following:
- (a)** A copy of the proposed ordinance.

(b) A statement demonstrating a need for an ordinance that deviates from the statutory requirements.

(c) An affidavit from the municipality certifying that it has consulted with the cemetery authorities in its jurisdiction who may be impacted by the proposed ordinance.

(2) The requirements under the ordinance are reasonable as determined by the board.

SECTION 4. 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 _____

Chair

STATE OF WISCONSIN
CEMETERY BOARD

IN THE MATTER OF RULEMAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : CEMETERY BOARD
CEMETERY BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 19-149)

ORDER

An order of the Cemetery Board to repeal CB 2.015, 4.015, and 5.03 (2); to consolidate renumber and amend CB 5.03 (intro) and (1); to amend CB 4.05; and to repeal and recreate CB 1.015 relating to change of trustee of care funds and preneed trust funds.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 157.19 (2) (b), (c), and (d), Stats.

Statutory authority: Sections 157.19 (2) (d) and 440.905 (2), Stats.

Explanation of agency authority:

Section 157.19 (2) (d), Stats., provides that “[t]he cemetery board shall promulgate rules establishing reasonable requirements and standards for the approval of changes under pars. (b) and (c). For approval of changes under par. (b), the rules shall require the cemetery authority to submit evidence that the rights and interests of the beneficiary of the care fund will be adequately protected if the change is approved. For approval of changes under par. (c), the rules shall require the trustee to submit evidence that the rights and interests of the purchaser under the preneed sales contract will be adequately protected if the change is approved.”

Section 440.905 (2), Stats., provides “[t]he board has rule-making authority and may promulgate rules relating to the regulation of cemetery authorities, cemetery salespersons, and cemetery preneed sellers...”

Related statute or rule: Sections 157.061 (1m), (2) and (13), and 157.19, Stats.

Plain language analysis:

This rule project amends CB 4.05 relating to the verification of deposit that must be submitted to the Cemetery Board following a change of trustee. The rule project clarifies that the cemetery authority must submit the verification notice to the Cemetery Board within 30 days of the transfer and must ask that the new trustee also submit a verification notice to the Cemetery Board.

The rule project also creates a definition for “Preneed trust fund” within ch. CB 1, and moves the definitions for “Care fund,” “Financial institution,” and “Cemetery authority” into to ch. CB 1, so that these definitions apply throughout the CB suite.

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

The FTC does regulate preneed funeral and burial agreement sales but does not regulate the process by which a trustee of either a preneed trust fund or care fund is transferred.

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:

A preliminary public hearing on scope was held at the Cemetery Board’s August 20, 2019 meeting. No comments were received.

Comparison with rules in adjacent states:

Illinois: Illinois statute requires that the trustee notify the Comptroller (a state officer) no less than 28 days prior to the effective date of the trustee change. The provision does not specify whether the transferring or the new trustee needs to inform the Comptroller. (815 ILCS 390/16 (b)).

Iowa: Iowa law does not generally restrict the transfer of care funds from one financial institution to another. (IA Stats. s. 523I.810 4.). Preneed trust funds can be transferred from one financial institution to another if notice is provided to the commissioner within 30 days of the transfer of the trust funds. The party required to submit the notice is not specified. (IA Stats. s. 523A.202 4.).

Michigan: Michigan allows cemeteries to change the trustee of care funds at any time, subject to the consent of the commissioner and subject to the terms of the cemetery’s agreement with the trustee. (MI Stats. s. 456.536 (16) (4)). Cemetery preneed sellers or trustees can change the depository or escrow agent of a preneed account at any time, without cause, and without the approval of any other party. The contract purchaser must be notified, however, if the depository or escrow agent is changed. (MI Stats. s. 328.224 (14) (3)).

Minnesota: Minnesota law gives cemetery authorities the ability to appoint multiple trustees to invest their care and improvement fund. Trustee appointments may be revoked by the board of the cemetery authority at any time by a two-third vote of its members. Seven days before any portion of the fund is transferred or withdrawn, the board of the cemetery authority must notify the county auditor of the activity and the destination of the funds withdrawn or transferred. (Minn. Stats. s. 306.77).

Preneed trust fund trustees can be appointed or removed at any time by the purchaser of the preneed contract. The beneficiary of the trust must be made aware of the initial location of the deposited funds, and any subsequent transfers of funds to a different financial institution. (Minn. Stats. s. 149A.97 (4) and (5)).

Summary of factual data and analytical methodologies:

The Cemetery Board performed a review of its administrative rules pursuant to s. 227.29, Stats., and determined that s. CB 4.05 was ambiguous as to which trustee must submit the verification of trustee transfer to the Cemetery Board as required by s. 157.19 (2) (c), Stats. This rule project remedies that ambiguity by revising the rule to require the cemetery authority to submit the verification, as required by the statute. The rule will also be modified to require the cemetery authority to request that the new trustee also submit the verification form to affirm that they are aware of the transfer and have received the funds.

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

The proposed rule was posted for 14 days to receive public comment on the 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:

These proposed rules do not have an 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 Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

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.

TEXT OF RULE

SECTION 1. CB 1.015 is repealed and recreated to read:

CB 1.015 Definitions. As used in chs. CB 1 to 6:

- (1) "Board" means the cemetery board.
- (2) "Care fund" has the meaning given in s. 157.061 (1m), Stats.
- (2) "Cemetery authority" has the meaning given in s. 157.061 (2), Stats.
- (3) "Financial institution" has the meaning given in s. 705.01 (3), Stats.
- (4) "Preneed trust fund" has the meaning given in s. 157.061 (13), Stats.

SECTION 2. CB 2.015 is repealed.

SECTION 3. CB 4.015 is repealed.

SECTION 4. CB 4.05 is amended to read:

CB 4.05 Verification of deposit. Within 30 days after the transfer of the care fund or preneed trust fund, the ~~trustee~~ cemetery authority shall submit information to the board verifying the transfer, including the amount deposited, the date the deposit was made, and the account number of the fund. In addition, the cemetery authority shall request that the new trustee submit the same information to the board verifying the receipt of the funds.

SECTION 5. CB 5.03 (intro.) and (1) are consolidated, renumbered, and amended to read:

CB 5.03 Definitions. As used in this chapter: ~~(1)~~ Alternative alternative investment means the use of care funds received from the sale of cemetery lots by a cemetery authority to purchase investment instruments, rather than depositing the care funds in a financial institution under s. 157.19, Stats., or with the treasurer of the county or city in which the cemetery is located.

SECTION 6. CB 5.03 (2) is repealed.

SECTION 7. 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 _____

 Chair

STATE OF WISCONSIN
CEMETERY BOARD

IN THE MATTER OF RULEMAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	CEMETERY BOARD
CEMETERY BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 19-148)

ORDER

An order of the Cemetery Board to amend CB 2.06 (1) (intro.) relating to maintenance of burial records.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 157.62 (5), Stats.

Statutory authority:

Sections 157.62 (5) and 440.905 (2), Stats.

Explanation of agency authority:

Section 157.62 (5), Stats. provides “[t]he cemetery board shall promulgate rules requiring cemetery authorities and licensees to maintain other records and establishing minimum time periods for the maintenance of those records.”

Section 440.905 (2), Stats. provides “[t]he board has rule-making authority and may promulgate rules relating to the regulation of cemetery authorities, cemetery salesperson, and cemetery preneed sellers...”

Related statute or rule: None.

Plain language analysis:

This rule brings ch. CB 2 into compliance with state law requiring that the Board set a minimum time period for which a cemetery authority must retain burial records. The rule project amends s. CB 2.06 to require that a cemetery authority retain burial records permanently.

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

The federal government does not set time frames for maintaining cemetery burial records.

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:

A preliminary public hearing on scope was held at the Cemetery Board's August 20, 2019 meeting. No comments were received.

Comparison with rules in adjacent states:

Illinois: Illinois requires cemetery authorities to keep a record of every interment, entombment, and inurnment. The record must include the deceased's name, age, date of burial, and the specific location of the interred, entombed, or inurned human remains. (225 ILCS 411/20-5 (d)). Neither statute nor rule specifies the length of time that the record must be retained by the cemetery authority.

Iowa: Iowa requires cemeteries to keep a record of each interment in a cemetery, including the date the remains were interred, the name, date of birth, date of death, and a unique identifier for the location of the interment space. There is no specification regarding how long these records must be maintained. (Iowa Stats. s. 523I.311).

Michigan: Michigan does not appear to require that cemeteries maintain burial records.

Minnesota: Minnesota requires cemeteries to keep a register of burials including the date of each burial, entombment, or cremation, and the name, age, sex, nativity, and cause of death of every person interred or cremated in the cemetery. There is no specification regarding how long these records must be maintained. (Minn. Stats. s. 306.03).

Summary of factual data and analytical methodologies:

The Cemetery Board performed a review of its administrative rules pursuant to s. 227.29, Stats. and determined that the rules did not provide for a minimum time period that cemetery authorities must retain burial records, as required by s. 157.62 (5), Stats. This rule project remedies that deficiency. The Cemetery Board determined that due to the importance of burial records, they ought to be retained indefinitely by the cemetery authority.

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

This rule was posted for 14 days to receive public comment on the 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:

These proposed rules do not have an 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 Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

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.

TEXT OF RULE

SECTION 1. CB 2.06 (1) (intro.) is amended to read:

CB 2.06 (1) (intro.) A cemetery authority or licensee shall maintain permanently a record for all human remains buried within a cemetery. This record shall include the following information:

SECTION 2. 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 _____

_____ Chair

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 s. 440.09 (2), Stats., enacted by 2019 Wisconsin Act 143.

Related statute or rule: None.

Plain language analysis:

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 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 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 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.502).

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.502).

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 will be posted on the department’s website for 14 days to solicit information from the public on the possible economic impact of the proposed rule.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis will be attached upon completion.

Effect on small business:

The board is currently soliciting economic impact information from the public and will update this section upon the conclusion of the 14 day solicitation period.

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 TBD 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 service members, former service members, 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 section.

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)
