



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3490/1
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2011 ASSEMBLY BILL 523

February 3, 2012 – Introduced by Representatives WYNN, KLEEFISCH and KAPENGA.
Referred to Committee on Consumer Protection and Personal Privacy.
Referred to Joint Survey Committee on Tax Exemptions.

1 **AN ACT to repeal** 157.067 (title), 157.067 (2) and (2m) and 445.12 (6); **to**
2 **renumber** 157.067 (1); **to renumber and amend** 157.635; **to amend** 70.11
3 (13); and **to create** 157.066, 157.635 (2) and 445.12 (6m) of the statutes;
4 **relating to:** permitting a funeral establishment to be located in cemetery,
5 prohibiting discrimination against a funeral establishment that has no
6 relationship with a cemetery, prohibiting discrimination against a cemetery
7 that has not relationship with a funeral establishment, and eliminating a
8 property tax exemption for cemetery authority property.

Analysis by the Legislative Reference Bureau

Current law prohibits a licensed funeral director from operating a funeral establishment or mausoleum in a cemetery. Current law also prohibits a cemetery authority from permitting a funeral establishment to be located on cemetery property. With certain exceptions, current law prohibits a cemetery authority from receiving or accepting any commission, fee, remuneration, or benefit of any kind from a funeral establishment or from an owner, employee, or agent of a funeral establishment. This bill eliminates each of these prohibitions.

Current law permits the cemetery authority of a cemetery that is affiliated with a religious society to adopt regulations that prohibit the burial in the cemetery of

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human remains of an individual who is not in the class of individuals identified by the religious society for burial in the cemetery. This bill retains the right of a religiously affiliated cemetery authority to adopt such regulations. However, under the bill, a religiously affiliated cemetery authority may not adopt regulations that prohibit the human remains of an individual from being buried at the cemetery authority's cemetery because funeral services for the individual were conducted at a funeral establishment other than a funeral establishment that has a financial relationship with the cemetery authority's cemetery. Also, the religiously affiliated cemetery authority may not adopt regulations that prohibit the human remains of an individual from being buried at the cemetery authority's cemetery because the human remains were prepared for burial or transportation at a funeral establishment other than a funeral establishment that has a financial relationship with the cemetery authority's cemetery.

Under the bill, if a cemetery authority erects, owns, operates, or has a financial interest in a funeral establishment, that cemetery authority may not prohibit the burial at the cemetery authority's cemetery of a deceased person whose human remains were prepared for burial or whose funeral services were conducted at a funeral establishment that has no relationship with the cemetery authority. Finally, a funeral establishment that has an ownership or other financial relationship with a cemetery authority may not require the human remains of a decedent to be buried in the cemetery authority's cemetery as a condition of those human remains being cared for or prepared for transportation or burial at that funeral establishment.

Under current law, land owned by a cemetery authority that is used exclusively as public burial grounds, tombs, and monuments is exempt from the property tax. In addition, personal property owned by the cemetery authority that is necessary for the care and management of burial grounds and sites is exempt from the property tax. Under the bill, land physically occupied by a funeral establishment, if the land is located in a cemetery, is subject to the property tax.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 70.11 (13) of the statutes is amended to read:
2 70.11 (13) CEMETERIES. Land owned by cemetery authorities, as defined in s.
3 157.061 (2), and used exclusively as public burial grounds and tombs and
4 monuments therein, and privately owned burial lots; land adjoining such burial

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1 grounds, owned and occupied exclusively by the cemetery authority for cemetery
2 purposes; personal property owned by any cemetery authority and necessary for the
3 care and management of burial grounds; burial sites and contiguous lands which are
4 cataloged under s. 157.70 (2) (a). This subsection does not apply to land physically
5 occupied by a funeral establishment, if the land is located in a cemetery.

6 **SECTION 2.** 157.066 of the statutes is created to read:

7 **157.066 Discrimination against funeral establishments prohibited.**

8 **(2)** No cemetery authority that has erected a funeral establishment or that
9 maintains any ownership, operation, or other financial interest in a funeral
10 establishment may prohibit the burial of a decedent's human remains in the
11 cemetery authority's cemetery because the caring or preparing for burial or
12 transportation of the human remains or the funeral services conducted for the
13 decedent occurred at a funeral establishment other than the funeral establishment
14 erected, maintained, owned, operated, or financially connected to the cemetery
15 authority's cemetery.

16 **SECTION 3.** 157.067 (title) of the statutes is repealed.

17 **SECTION 4.** 157.067 (1) of the statutes is renumbered 157.066 (1).

18 **SECTION 5.** 157.067 (2) and (2m) of the statutes are repealed.

19 **SECTION 6.** 157.635 of the statutes is renumbered 157.635 (1) and amended to
20 read:

21 157.635 **(1)** ~~Nothing~~ Subject to sub. (2), nothing in this subchapter prohibits
22 a cemetery authority of a cemetery that is affiliated with a religious society organized
23 under ch. 187 from prohibiting the burial of the human remains of an individual in
24 the cemetery if the individual was in a class of individuals who are prohibited under

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1 regulations adopted by the cemetery authority or religious society from being buried
2 in the cemetery.

3 **SECTION 7.** 157.635 (2) of the statutes is created to read:

4 157.635 (2) A cemetery authority described in sub. (1) may not adopt a
5 regulation that prohibits the human remains of an individual from being buried in
6 the cemetery on the basis of any of the following:

7 (a) That funeral services for the deceased individual were conducted at a
8 funeral establishment other than a funeral establishment erected, maintained,
9 owned, operated, or financially connected to the cemetery authority's cemetery.

10 (b) That the human remains of the deceased individual were cared for or
11 prepared for burial or transportation at a funeral establishment other than a funeral
12 establishment erected, maintained, owned, operated, or financially connected to the
13 cemetery authority's cemetery.

14 **SECTION 8.** 445.12 (6) of the statutes is repealed.

15 **SECTION 9.** 445.12 (6m) of the statutes is created to read:

16 445.12 (6m) No licensed funeral director or operator of a funeral establishment
17 that is erected, owned, or operated by a cemetery authority or a financial interest of
18 which is held by a cemetery authority may require the human remains of a decedent
19 to be buried in the cemetery authority's cemetery as a condition of caring or preparing
20 for burial or transportation of the decedent or as a condition of conducting funeral
21 services for the decedent.

22 **SECTION 10. Initial applicability.**

23 (1) The treatment of section 70.11 (13) of the statutes first applies to the
24 property tax assessments as of January 1, 2012.

25 (END)