



Time for cemetery law to die?

By [Rick Romell](#) of the Journal Sentinel

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They're fighting over the dead.

In the latest round of a long, long match, Wisconsin's cemetery owners and funeral directors are battling over who can do what with those who are no longer with us.

At issue: A 70-some-year-old law that says if you own a cemetery, you can't own a funeral home, and vice versa.

The cemetery people want the law repealed. The funeral directors want it to stand. Both sides say their position is best for consumers. Both have a lot at stake.

Scrapping the law "would absolutely be a big deal for the death-care professionals in Wisconsin," said Thomas Parmalee, executive director of Kates-Boylston Publications, which puts out Funeral Service Insider, American Cemetery and other industry trade journals.

"Funeral directors by and large are probably fearful of it, because they may potentially face new competition from cemetery operators who would get involved in funeral service. Cemeteries, on the other hand, would see it as an opportunity in a tough economy."

These are, in fact, trying times in the death-care business. For one thing, there are fewer bodies.

Since the mid-1990s, the share of U.S. deaths involving cremation has doubled, to 41%, according to the [Cremation Association of North America](#). In Wisconsin from just 2005 through 2010, the cremation percentage jumped from 34% to 44%.

The increasing prevalence of cremation, which typically generates less revenue than burial, has challenged both cemeteries and funeral homes, said Glen Porter, president of New Berlin's [Highland Memorial Park](#) and a leader in the drive to repeal the cross-ownership ban.

But cemeteries appear to be hit hardest. It's not just the slowing pace of burials.

Also a problem is the last few years' turmoil in the financial markets, which has hurt returns on investments of cemetery endowment funds, said Ron Hast, publisher of Mortuary Management Magazine.

"It very well may be necessary for a cemetery to get into the funeral business to sustain their cemetery's future," he said. "And that's a realistic statement."

Porter also said the economic situation "has made it difficult for moderate- and small-size cemeteries to maintain themselves."

"We think we're going to see a greater and greater number of cemeteries in financial difficulty," he said.

Legal in most states

Most states allow cross-ownership of cemeteries and funeral homes. Wisconsin is among nine that restrict it, according to the National Funeral Directors Association. Four of those states forbid for-profit ownership of a cemetery.

"Just because everybody else is doing it doesn't make it a good idea," said Scott Peterson, executive director of the Wisconsin Funeral Directors Association.

A repeal, he said, would reduce competition, with combination cemetery-funeral homes dominating local markets. The likely result would be national chains swooping in, buying lots of cemeteries and leaving consumers in an area with only one choice, Peterson said.

Cemetery owners scoff at such allegations. It's the law that squelches competition with fence-me-in protections for funeral homes, they say.

"This antiquated prohibition limits consumer choice and is a barrier to cost savings for families dealing with the death of a loved one," Christine Toson Hentges, vice president of The Tribute Companies, a Hartland-based operator of four Wisconsin cemeteries, said in a statement.

'Red-letter capitalist'

Rep. Evan Wynn (R-Whitewater) has drafted a bill to repeal the cross-ownership ban and is seeking co-sponsors. The measure hasn't been introduced yet.

"I just truly believe in a free-market system where you should be able to have that competition in business," Wynn said.

Daniel Isard, a Phoenix-based consultant to funeral homes and cemeteries, agrees. He said cemetery-funeral home combinations are "strongly appealing" to consumers and should be allowed.

"I am a red-letter capitalist," he said. "I believe that the free market will dictate who is to win in these battles."

Hast said Wisconsin's law is "probably an unrealistic restriction." Removing it, he said, "brings in a degree of competition, and competition usually will help keep prices in order."

But to Mark Krause, president and owner of Milwaukee's Krause Funeral Homes, the playing field is tilted toward the cemeteries.

A cemetery typically has space to build a funeral home, he said, but it doesn't work the other way around.

"I can't go in and demolish neighborhoods to put up cemeteries around my established businesses," Krause said.

Further, he said, cemeteries have long benefited from the business advantage of being exempt from property tax.

Siding with the funeral directors this time is someone who is often their critic: Josh Slocum, executive director of the Vermont-based Funeral Consumers Alliance.

"It's a terrible idea," Slocum said of the proposed repeal.

While it would seem consumers would benefit from one-stop shopping and the fresh competition as larger firms operate more efficiently, that "doesn't take into account the practical reality in the funeral business," Slocum said.

The proposal won't require people to hold a funeral at the cemetery where the burial will occur, but many will believe they're obliged to do that, he said.

"That puts them in a vulnerable position, which the combo operators are fully aware of," Slocum said.

"We need to remember that the funeral consumer is not the mythical rational actor," he said.

Advantages to combining

The securities filings of publicly traded funeral and cemetery companies testify to the business advantages of combinations.

They "typically can be more cost competitive and have higher gross margins than if the funeral and cemetery . . . were operated separately," says the most recent annual report of Service Corporation International.

The Houston-based company operates more than 1,400 funeral homes and about 375 cemeteries in North America. Its holdings include 16 Wisconsin funeral homes.

New Orleans-based Stewart Enterprises Inc. said in its annual report that nearly half of its 141 cemeteries have a funeral home on the grounds, and that they're usually more profitable than separate operations.

"A family that is planning a burial in one of our cemeteries often perceives our on-site funeral home to be a more desirable location for funeral services than an unaffiliated off-site funeral home nearby," the filing said. "Thus, the call volume of the funeral home is enhanced by the heritage of the cemetery, and, over time, the volume of cemetery events increases as well."

Stewart has five cemeteries in Wisconsin, including one of the state's busiest, Wisconsin Memorial Park in Brookfield.

Representatives of both Stewart and Service Corporation International said their companies are not involved in the effort to repeal Wisconsin's anti-combination law.

This is at least the third time cemetery owners here have tried to get the law taken off the books, Porter said. Earlier attempts came in the late '80s and late '90s, he said.

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