



2003 SENATE BILL 539

March 9, 2004 - Introduced by Senator SCHULTZ. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

1 **AN ACT** *to repeal* 445.105 (2); *to renumber* 445.16; *to renumber and amend*
2 445.01 (5) (a); *to amend* 30.67 (6) (b), 69.18 (1) (a) 3., 157.067 (1), 252.15 (5) (a)
3 7., 445.01 (6), 445.04 (1), 445.095 (2) (c), 445.105 (1) and 445.15 (1); and *to*
4 **create** 445.01 (2m), 445.01 (4g), 445.01 (4r), 445.01 (5) (a) 3., 445.01 (6g), 445.01
5 (9), 445.105 (2m), 445.145 and 445.16 (2) of the statutes; **relating to:**
6 regulating funeral directors and funeral establishments, regulating cremation
7 and funeral advertising, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the regulation of funeral establishments and directors and creates requirements for printed advertising for cremation and funeral services.

Funeral establishments and directors

Under current law, a person is prohibited from operating a funeral establishment unless the funeral directors examining board (board) has issued a permit for the funeral establishment. With certain exceptions, a "funeral establishment" is defined as any building or part of a building that is used for any of the following: 1) the care and preparation for burial or transportation of dead human bodies; or 2) holding or conducting funeral services. In addition, a funeral establishment must have a preparation room for preparing and embalming dead

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human bodies. Current law prohibits the board from issuing a permit unless a funeral director licensed by the board is in full-time charge of the funeral establishment. As a result, a funeral director may be in charge of only one funeral establishment.

Under this bill, a funeral establishment must satisfy the following requirements to receive a permit: 1) the funeral establishment must have a seating capacity of 50 or more persons; 2) the building or structure in which the funeral establishment is located must not contain more than one other business that does not provide goods or services related to funerals, burials, or the final disposition of human remains; and 3) such building or structure must be affixed to real property.

Also, the bill requires a licensed funeral director to be in charge of the funeral establishment. Unlike under current law, the funeral director does not have to be in full-time charge. However, under the bill, the funeral director may be in charge of no more than two other funeral establishments. In addition, at least one of the funeral establishments of which the funeral director is in charge must have a preparation room. Therefore, unlike under current law, a funeral establishment does not have to have a preparation room, provided that the following two conditions are satisfied: 1) no preparation or embalming of dead human bodies takes place at the funeral establishment; and 2) the funeral director in charge of the funeral establishment is also in charge of another funeral establishment that has a preparation room.

The bill also prohibits the board from issuing a funeral establishment permit to a medical care institution, church, synagogue, mosque, or religious organization.

The bill also makes changes regarding the regulation of funeral directors. Under current law, a person may not act as a funeral director unless he or she is licensed by the board, and “funeral director” is defined as a person who conducts, or holds himself or herself out as conducting, embalming or otherwise preparing for, or supervising, the burial or disposal of dead human bodies. In addition, current law requires the business of a funeral director to be conducted in a funeral establishment.

The bill changes the definition of “funeral director” so that it also includes a person who, for compensation, makes “funeral arrangements”, which are defined as the provision of information or advice on the selection and cost of facilities or funeral services provided for the final disposition of a dead human body. The bill specifies that a person is a funeral director even if he or she makes funeral arrangements incidentally in the conduct of a profession or occupation in which he or she is primarily employed. As a result, under the bill, a person may not make funeral arrangements unless he or she is licensed as a funeral director. However, the bill creates an exception to this prohibition for funeral arrangements made for a deceased “family member,” which the bill defines as a spouse, parent, or child, or a person related by blood or adoption. Also, the bill creates an exception for persons licensed by the Office of the Commissioner of Insurance who sell or solicit the sale of certain burial agreements. The bill also allows a funeral director to make funeral arrangements or conduct funeral services outside a funeral establishment. However, as under current law, any other business of a funeral director must be conducted in a funeral establishment.

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The bill also prohibits the board from issuing a funeral establishment permit to a medical care institution, church, synagogue, mosque, or religious organization.

In addition, the bill provides that a person who violates state law regulating funeral establishments or funeral directors may be subject to a fine of no more than \$5,000, imprisonment for between 30 days and three months, or both. Under current law, the potential fine is limited to between \$50 and \$200.

The bill does not affect the exemptions under current law from funeral establishment and director regulation that apply to the following: 1) certain funeral buildings in cemeteries; 2) certain persons involved in the anatomical study of indigent dead human bodies; 3) public officers and institutions; or 4) the customs or rites of any religious sect in the burial of their dead.

Printed advertising

The bill prohibits a person from making an advertisement representing that the person conducts the business of a funeral director or provides any funeral or cremation service, unless the advertisement includes the address of one funeral establishment or place of business at which the person conducts such business or provides such services. This prohibition applies to any advertisement by newspaper, periodical, Internet web page, telephone book listing, direct mail, or electronic mail solicitation.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the ***state and 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.** 30.67 (6) (b) of the statutes is amended to read:
2 30.67 **(6)** (b) In cases of death involving a boat in which the person died within
3 6 hours of the time of the accident, a blood specimen of at least 10 cc. shall be
4 withdrawn from the body of the decedent within 12 hours after his or her death, by
5 the coroner or medical examiner or by a physician so designated by the coroner or
6 medical examiner or by a qualified person at the direction of the physician. All
7 morticians funeral directors, as defined in s. 445.01 (5), shall obtain a release from
8 the coroner or medical examiner prior to proceeding with embalming any body

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1 coming under the scope of this section. The blood so drawn shall be forwarded to a
2 laboratory approved by the state health officer for analysis of the alcoholic content
3 of the blood specimen. The coroner or medical examiner causing the blood to be
4 withdrawn shall be notified of the results of each analysis made and shall forward
5 the results of each analysis to the state health officer. The state health officer shall
6 keep a record of all examinations to be used for statistical purposes only. The
7 cumulative results of the examinations, without identifying the individuals
8 involved, shall be disseminated and made public by the state health officer. The
9 department shall reimburse coroners and medical examiners for the costs incurred
10 in submitting reports and taking blood specimens and laboratories for the costs
11 incurred in analyzing blood specimens under this section.

12 **SECTION 2.** 69.18 (1) (a) 3. of the statutes is amended to read:

13 69.18 (1) (a) 3. A person acting under s. 157.02 or 445.16 (1).

14 **SECTION 3.** 157.067 (1) of the statutes is amended to read:

15 157.067 (1) In this section, "funeral establishment" has the meaning given in
16 s. 445.01 (6), except that "funeral establishment" does not include a building or part
17 of a building that is erected under s. 157.11 (1) for holding or conducting funeral
18 services if dead human bodies are not embalmed, cared for, or prepared for burial or
19 transportation, in the building.

20 **SECTION 4.** 252.15 (5) (a) 7. of the statutes is amended to read:

21 252.15 (5) (a) 7. To a funeral director, as defined under s. 445.01 (5) (a) 1. or 2.
22 or (c) or to other persons who prepare the body of a decedent for burial or other
23 disposition or to a person who performs an autopsy or assists in performing an
24 autopsy.

25 **SECTION 5.** 445.01 (2m) of the statutes is created to read:

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1 445.01 **(2m)** “Compensation” means direct or indirect payment, including the
2 expectation of payment whether or not actually received.

3 **SECTION 6.** 445.01 (4g) of the statutes is created to read:

4 445.01 **(4g)** “Family member” means a spouse, parent, or child, or a person
5 related by blood or adoption to another person.

6 **SECTION 7.** 445.01 (4r) of the statutes is created to read:

7 445.01 **(4r)** “Funeral arrangements” means the provision of information or
8 advice on the selection and cost of facilities or funeral services provided for the final
9 disposition of a dead human body.

10 **SECTION 8.** 445.01 (5) (a) of the statutes is renumbered 445.01 (5) (a) (intro.)
11 and amended to read:

12 445.01 **(5)** (a) (intro.) A person engaged in or conducting, or holding himself or
13 herself out, in whole or in part, as being engaged in ~~embalming~~ any of the following:

14 1. Embalming or otherwise preparing for the burial or disposal, ~~or directing of~~
15 dead human bodies.

16 2. Directing and supervising the burial or disposal, of dead human bodies.

17 **SECTION 9.** 445.01 (5) (a) 3. of the statutes is created to read:

18 445.01 **(5)** (a) 3. For compensation, making funeral arrangements, including
19 any funeral arrangements that are incidentally made in the conduct of the profession
20 or occupation in which the person is primarily employed, but not including any
21 funeral arrangements that a person makes for a deceased family member.

22 **SECTION 10.** 445.01 (6) of the statutes is amended to read:

23 445.01 **(6)** “Funeral establishment” means any building or part of a building
24 used and held out to the public as being used ~~in the care and preparation for~~ caring
25 or preparing for the burial or transportation of dead human bodies or for holding or

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1 conducting of funeral services. ~~“Funeral establishment” does not include a building~~
2 ~~or part of a building that is erected under s. 157.11 (1) for holding or conducting~~
3 ~~funeral services if dead human bodies are not cared for or prepared for burial or~~
4 ~~transportation in the building. A funeral establishment must contain a preparation~~
5 ~~room equipped with tile, cement or composition floor, necessary drainage and~~
6 ~~ventilation and contain necessary instruments and supplies for the preparation and~~
7 ~~embalming of dead human bodies for burial, transportation or other disposition.~~

8 **SECTION 11.** 445.01 (6g) of the statutes is created to read:

9 445.01 **(6g)** “Funeral services” means ceremonies held in conjunction with the
10 disposition of the dead, including visitation, religious rites, memorials, and
11 graveside services, whether or not a dead human body is present during the
12 ceremonies.

13 **SECTION 12.** 445.01 (9) of the statutes is created to read:

14 445.01 **(9)** “Preparation room” means any building or part of a building used
15 for embalming, caring for, or preparing for burial or transportation dead human
16 bodies.

17 **SECTION 13.** 445.04 (1) of the statutes is amended to read:

18 445.04 **(1)** The Except for making funeral arrangements or conducting funeral
19 services, the business of a funeral director must be conducted in a funeral
20 establishment equipped for the care and preparation for burial or transportation of
21 dead human bodies. What shall be deemed “necessary equipment” shall be defined
22 in the rules that has been issued a permit by the examining board.

23 **SECTION 14.** 445.095 (2) (c) of the statutes is amended to read:

24 445.095 **(2)** (c) Only one funeral director apprenticeship shall be recognized by
25 the examining board at any one funeral establishment in a current year that has had

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1 less than 150 funeral services or prepared less than 150 bodies for burial or shipment
2 during the preceding year.

3 **SECTION 15.** 445.105 (1) of the statutes is amended to read:

4 445.105 (1) No person shall may conduct, maintain, manage, or operate a any
5 funeral establishment unless the examining board has issued the person a permit
6 for each such the funeral establishment has been issued by the examining board and
7 the permit is conspicuously displayed in such the funeral establishment. ~~In case of,~~
8 except that a permit is not required for funeral services held in any building or part
9 of a building that is erected under s. 157.11 (1), private residence, church, or lodge
10 hall, no permit shall be required if dead human bodies are not embalmed, cared for,
11 or prepared for burial or transportation, in the building, residence, church, or lodge
12 hall.

13 **SECTION 16.** 445.105 (2) of the statutes is repealed.

14 **SECTION 17.** 445.105 (2m) of the statutes is created to read:

15 445.105 (2m) The examining board may not issue a permit to operate a funeral
16 establishment unless all of the following are satisfied:

17 (a) The funeral establishment has a seating capacity of 50 or more persons.

18 (b) The building or structure in which the funeral establishment is located
19 contains no more than one other business that does not provide goods or services
20 related to funerals, burials, or the final disposition of human remains.

21 (c) The building or structure in which the funeral establishment is located is
22 affixed to real property.

23 (d) A licensed funeral director is in charge of the funeral establishment and the
24 funeral director is also in charge of no more than two other funeral establishments

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1 and at least one of the funeral establishments of which the funeral director is in
2 charge has a preparation room.

3 (e) If the funeral establishment is used for caring or preparing for burial or
4 transportation of dead human bodies, the funeral establishment has a preparation
5 room; the preparation room is equipped with a tile, cement, or composition floor; and
6 the preparation room has necessary drainage and ventilation and contains
7 necessary equipment, instruments, and supplies for the preparation and embalming
8 of dead human bodies for burial, transportation, or other disposition. The examining
9 board shall promulgate rules specifying the equipment, instruments, and supplies
10 that are necessary for purposes of this paragraph.

11 (f) The operator of the funeral establishment is not an operator of a medical care
12 institution, as defined in s. 610.70 (1) (e), or a church, synagogue, or mosque, or any
13 organization, whether or not organized under ch. 187, that operates under a creed,
14 as defined in s. 111.32 (3m).

15 **SECTION 18.** 445.145 of the statutes is created to read:

16 **445.145 Printed advertising.** A person may not, in any advertisement by
17 newspaper, periodical, Internet web page, telephone book listing, direct mail, or
18 electronic mail solicitation, represent that the person conducts the business of a
19 funeral director or provides any funeral or cremation service, unless the
20 advertisement includes the address of one funeral establishment or place of business
21 at which the person conducts such business or provides such services.

22 **SECTION 19.** 445.15 (1) of the statutes is amended to read:

23 445.15 (1) Except as provided in sub. (1m), any person violating any provision
24 of this chapter or any rule of the department of health and family services and the
25 examining board relating to its subject matter, shall be fined not less than \$50 nor

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1 more than \$200, or \$5,000, imprisoned not less than 30 days nor more than 3 months,
2 or both.

3 **SECTION 20.** 445.16 of the statutes is renumbered 445.16 (1).

4 **SECTION 21.** 445.16 (2) of the statutes is created to read:

5 445.16 (2) This chapter does not require an insurance intermediary licensed
6 under ch. 628 to be licensed as a funeral director to sell or solicit the sale of a burial
7 agreement, as defined in s. 445.125 (3m) (a) 2., that is funded with the proceeds of
8 a life insurance policy.

9 **SECTION 22. Initial applicability.**

10 (1) ADVERTISEMENTS. The treatment of section 445.145 of the statutes first
11 applies to advertisements that are subject to contracts entered into, modified, or
12 extended on the effective date of this subsection.

13 (2) VIOLATIONS. The treatment of section 445.15 (1) of the statutes first applies
14 to violations occurring on the effective date of this subsection.

15 **SECTION 23. Effective date.**

16 (1) This act takes effect on the first day of the 7th month beginning after
17 publication.

18 (END)