



1995 SENATE BILL 535

February 7, 1996 - Introduced by Senators RUDE, GEORGE, FITZGERALD, DARLING, FARROW, GROBSCHMIDT, ROSENZWEIG, SCHULTZ and WINEKE, cosponsored by Representatives ALBERS, LA FAVE, PROSSER, JENSEN, DUFF, GREEN, HOVEN, HUEBSCH, JOHNSRUD, KREIBICH, F. LASEE, LAZICH, LEHMAN, MEYER, SILBAUGH, UNDERHEIM, URBAN, WALKER, ROBSON, KAUFERT, GOETSCH, HAHN, LADWIG, MUSSER, RILEY and VRAKAS. Referred to Committee on Business, Economic Development and Urban Affairs.

1 **AN ACT to renumber and amend** 445.12 (3) and 632.41 (2); **to amend** 445.12
2 (7); and **to create** 445.12 (3) (b), 445.12 (3g), 445.127 and 632.41 (2) (b) of the
3 statutes; **relating to:** the sale of prearranged funeral plans, funding of
4 prearranged funeral plans with life insurance policies and annuities and
5 granting rule-making authority.

Analysis by the Legislative Reference Bureau

Current law provides for various restrictions relating to the use and funding of contracts that provide for the sale of cemetery lots, mausoleum spaces and other burial or funeral merchandise or services that are not immediately needed but will instead be provided in the future. Generally, money paid to a cemetery authority, funeral director or funeral establishment for such contracts must be held in trust for the person purchasing the funeral merchandise or services.

Also, under current law, if an insurer agrees in an insurance policy to pay for any of the incidents of burial or other disposition of the body of a deceased, the insurance policy may not provide that the benefits are payable to a funeral director or to any other person doing business related to burials. However, this prohibition does not prohibit a person from naming a funeral director as a beneficiary of a life insurance policy in conjunction with a separate agreement between the insured and the funeral director that the proceeds of the life insurance policy will be used for funeral and burial expenses. See 71 Opinions of the Attorney General 7 (1982).

This bill creates requirements relating to the sale and solicitation of prearranged funeral plans that are funded with the proceeds of a life insurance policy or annuity. The bill defines "prearranged funeral plan" to mean a written agreement between a funeral establishment or funeral director and a person in which the funeral establishment or funeral director agrees to provide to a person, after that person is deceased, funeral merchandise or funeral services. Under the bill, a funeral

director, an operator of a funeral establishment or an agent of a funeral director or funeral establishment operator may sell or solicit the sale of a prearranged funeral plan that is funded with the proceeds of a life insurance policy or an annuity only if: a) the funeral director, funeral establishment operator or agent is licensed as an insurance intermediary; and b) all of the following requirements have been met:

1. The prearranged funeral plan specifies the licensed funeral director or the funeral establishment that will provide the funeral services or funeral merchandise to be provided under the plan.

2. The prearranged funeral plan includes a provision setting forth the nature and extent of any price guarantee for the funeral merchandise or funeral services that are to be provided under the plan.

3. The funeral director, funeral establishment operator or agent of the funeral director or funeral establishment operator has disclosed certain information specified in the bill to the person applying for the prearranged funeral plan. The information that the bill requires to be disclosed includes a list of the funeral merchandise and funeral services to be provided under the prearranged funeral plan, a statement of whether the price of the funeral merchandise or funeral services provided under the prearranged funeral plan is guaranteed, a statement of any restrictions or penalties relating to delivery or performance under the prearranged funeral plan, and an explanation of the effect on the prearranged funeral plan, if any, of a change in the life insurance policy or annuity funding the prearranged funeral plan, of penalties incurred for failure to pay premiums on the policy or to make payments under the annuity or of penalties incurred or money received as the result of cancellation or surrender of the policy or annuity.

The bill also provides an exception to the current law prohibition against a life insurance policy providing that the benefits are payable to a funeral director or to any other person doing business related to burials. Under the bill, a life insurance policy may provide for the assignment of the proceeds of the policy or annuity to a funeral director or a funeral establishment if that assignment of proceeds is contingent on the provision of funeral merchandise or funeral services as provided for in a prearranged funeral plan that satisfies the requirements established by the bill.

Finally, the bill prohibits, with certain exceptions, a funeral director, a funeral establishment operator or an agent of a funeral director or funeral establishment operator from doing any of the following to solicit the sale of a prearranged funeral plan funded by a life insurance policy or annuity:

1. Knowingly contacting a prospective purchaser of a prearranged funeral plan in a hospital, health care facility or similar facility or institution.

2. Knowingly contacting a relative of a person whose death is imminent or appears to be imminent.

3. Contacting a prospective purchaser of a prearranged funeral plan by door-to-door solicitation or automated telephone calls that are made on a random basis.

For further information see the *state* 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.** 445.12 (3) of the statutes is renumbered 445.12 (3) (intro.) and
2 amended to read:

3 445.12 **(3)** (intro.) No licensed funeral director or operator of a funeral
4 establishment may, directly or indirectly, solicit a funeral service or the right to
5 prepare a dead human body for burial or transportation either before or after death
6 has occurred, or pay or cause to be paid any sum of money or other valuable
7 consideration for the securing of the right to do such work; ~~but nothing herein shall~~
8 ~~interfere with the right of any person not a licensed funeral director to solicit.~~ This
9 subsection does not prohibit any of the following:

10 (a) The solicitation of memberships or sell the sale of stock or memberships in
11 any association organized under ch. 185 by any person who is not a licensed funeral
12 director.

13 **SECTION 2.** 445.12 (3) (b) of the statutes is created to read:

14 445.12 **(3)** (b) The solicitation or sale of prearranged funeral plans to the extent
15 permitted under sub. (3g) and s. 445.127.

16 **SECTION 3.** 445.12 (3g) of the statutes is created to read:

17 445.12 **(3g)** (a) Except as provided in pars. (b) and (c), a licensed funeral
18 director, agent of a licensed funeral director, operator of a funeral establishment or
19 agent of an operator of a funeral establishment may not solicit the sale of a
20 prearranged funeral plan under s. 445.127 by doing any of the following:

1 1. Knowingly contacting a prospective purchaser of a prearranged funeral plan
2 in a hospital, health care facility or similar facility or institution.

3 2. Knowingly contacting a relative of a person whose death is imminent or
4 appears to be imminent.

5 3. Contacting a prospective purchaser of a prearranged funeral plan by
6 door-to-door solicitation or automated telephone calls that are made on a random
7 basis.

8 (b) A licensed funeral director, agent of a licensed funeral director, operator of
9 a funeral establishment or agent of an operator of a funeral establishment may solicit
10 the sale of a prearranged funeral plan under s. 445.127 by contacting any person if
11 any of the following applies:

12 1. The prospective purchaser requests the contact.

13 2. The contact is part of a mass-mailing, television, radio, print or other type
14 of advertising campaign that is not directed solely toward persons in a hospital,
15 health care facility or similar facility or institution or toward the relatives of a person
16 whose death is imminent or appears to be imminent.

17 (c) Paragraph (a) 3. does not prohibit a licensed funeral director, agent of a
18 licensed funeral director, operator of a funeral establishment or agent of an operator
19 of a funeral establishment from using mass-marketing practices or in-person
20 contacts or communications permitted under this section or by a rule promulgated
21 by the examining board.

22 **SECTION 4.** 445.12 (7) of the statutes is amended to read:

23 445.12 (7) No licensed funeral director or operator of a funeral establishment
24 may sell or cause to be sold any shares of stocks, certificates of membership or any
25 other form of certificate which provides for any burial benefit or any rebate at the

1 time of death to the holders thereof. This subsection does not prohibit the sale of
2 prearranged funeral plans to the extent permitted under, and that are in conformity
3 with, s. 445.127.

4 **SECTION 5.** 445.127 of the statutes is created to read:

5 **445.127 Prearranged funeral plans funded with proceeds of life**
6 **insurance policy or annuity. (1)** In this section:

7 (a) "Agent" means an authorized representative of a funeral director or funeral
8 establishment.

9 (b) "Cash advance item" means personal property or a service that is obtained
10 by a funeral director or funeral establishment from a 3rd party and that is paid for
11 by the funeral director or funeral establishment on behalf of, and subject to
12 reimbursement from, a person purchasing funeral merchandise or funeral services
13 from the funeral director or funeral establishment. "Cash advance item" includes
14 cemetery or crematory services, pallbearers, public transportation, clergy honoraria,
15 flowers, musicians or vocalists, nurses, obituary notices, gratuities and death
16 certificates.

17 (c) "Funeral merchandise or funeral services" means personal property or
18 services typically sold or provided in connection with the final disposition or
19 memorialization of human remains, including caskets or other primary containers,
20 rental, temporary or disposable caskets or containers, outer burial containers,
21 cremation or transportation containers, funeral clothing and accessories,
22 monuments, grave markers, cremation urns, embalming services and funeral
23 directing services. "Funeral merchandise or funeral services" does not include a cash
24 advance item or opening and closing costs that are associated with the burial of a
25 deceased person.

1 (d) "Prearranged funeral plan" means a written agreement between a funeral
2 establishment or funeral director and a person in which the funeral establishment
3 or funeral director agrees to provide to a person, after that person is deceased,
4 funeral merchandise or funeral services.

5 **(2)** (a) A licensed funeral director, an operator of a funeral establishment, an
6 agent of a licensed funeral director or, subject to sub. (3), an agent of a funeral
7 establishment may sell or solicit the sale of a prearranged funeral plan that is funded
8 with the proceeds of a life insurance policy or annuity if all of the following apply:

9 1. The prearranged funeral plan meets the requirements specified in subs. (4)
10 to (6).

11 2. The licensed funeral director, operator of the funeral establishment or agent
12 is licensed as an insurance intermediary under ch. 628.

13 (b) A licensed funeral director or funeral establishment may authorize an agent
14 who is an insurance intermediary licensed under ch. 628 to sell or solicit the sale of
15 a prearranged funeral plan that is funded with the proceeds of a life insurance policy
16 or annuity and that meets the requirements specified in subs. (4) to (6).

17 **(3)** (a) No agent of a funeral establishment may solicit the sale of or sell a
18 prearranged funeral plan funded with the proceeds of a life insurance policy or
19 annuity unless he or she has a contract with the funeral establishment that
20 authorizes him or her to act as the agent of the funeral establishment.

21 (b) If an agent of a funeral establishment solicits the sale of or sells a
22 prearranged funeral plan funded with the proceeds of a life insurance policy or
23 annuity, the agent shall disclose to the prospective purchaser of the prearranged
24 funeral plan the identity of the funeral establishment of which he or she is an agent.

1 **(4)** A prearranged funeral plan that is funded with the proceeds of a life
2 insurance policy or annuity shall specify in the plan the licensed funeral director or
3 the funeral establishment that will provide the funeral services or funeral
4 merchandise to be provided under the plan.

5 **(5)** (a) A prearranged funeral plan that is funded with the proceeds from a life
6 insurance policy or annuity shall include a provision setting forth the nature and
7 extent of any price guarantee for the funeral merchandise or funeral services that
8 are to be provided under the prearranged funeral plan.

9 (b) If an agent solicits and sells a prearranged funeral plan that is funded with
10 the proceeds of a life insurance policy or annuity, the licensed funeral director who
11 owns or is an agent of the funeral establishment that will provide funeral
12 merchandise or funeral services under the prearranged funeral plan shall ratify the
13 prearranged funeral plan in writing and with his or her signature.

14 **(6)** Before an agent, a licensed funeral director or an operator of a funeral
15 establishment accepts an applicant's initial premium or deposit for a prearranged
16 funeral plan that is funded or will be funded by a life insurance policy or annuity, the
17 agent, funeral director or operator of a funeral establishment shall, in a writing that
18 is clear and conspicuous, disclose the following information to the applicant:

19 (a) The fact that a life insurance policy or annuity is involved in or connected
20 to, or is being used to fund, the prearranged funeral plan.

21 (b) The type of insurance instrument or annuity that is funding the
22 prearranged funeral plan.

23 (c) The effect on the prearranged funeral plan of all of the following:

1 1. Changing the life insurance policy or annuity, including changing the
2 assignment of the policy or annuity proceeds, changing the beneficiary or annuitant
3 designation or changing the use of the proceeds.

4 2. Any penalties incurred by the policyholder or annuity contract holder as a
5 result of failing to make premium payments or payments under the annuity.

6 3. Any penalties incurred or money received as a result of cancellation or
7 surrender of the life insurance policy or annuity.

8 (d) The nature of the relationship between the insurance intermediary who
9 solicited or is selling the life insurance policy or annuity and the funeral director or
10 funeral establishment that will be providing funeral or burial merchandise or
11 services under the prearranged funeral plan.

12 (e) The relationship of the life insurance policy or annuity to the funding of the
13 prearranged funeral plan and the existence and terms of any guarantees, other than
14 a guarantee specified in par. (f), relating to the prearranged funeral plan.

15 (f) A list of the funeral merchandise and funeral services that are applied for
16 or contracted for under the prearranged funeral plan and all relevant information
17 concerning the price of the funeral services provided under the prearranged funeral
18 plan, including a statement as to whether the purchase price of the funeral
19 merchandise or funeral services provided under the prearranged funeral plan is
20 guaranteed at the time of the purchase of the prearranged funeral plan or whether
21 the purchase price of the funeral merchandise or funeral services provided under the
22 prearranged funeral plan is to be determined at the time of need.

23 (g) All relevant information concerning what occurs, and whether any
24 entitlements or obligations arise, if there is a difference between the proceeds of the

1 life insurance policy or annuity and the amount of money actually needed to fund the
2 prearranged funeral plan.

3 (h) Any restrictions, including geographic restrictions, or penalties relating to
4 delivery or performance under the prearranged funeral plan, including any
5 restrictions or penalties relating to the inability of the funeral establishment to
6 perform.

7 (i) A statement as to whether a sales commission or other form of compensation
8 is being paid to the agent who sold or solicited the sale of a prearranged funeral plan
9 and, if so, the identity of the persons to whom the commission or other compensation
10 is paid.

11 **(7)** (a) A licensed funeral director or operator of a funeral establishment who,
12 either directly or through an agent, solicits the sale of or sells a prearranged funeral
13 plan funded with the proceeds of a life insurance policy or annuity shall maintain a
14 record of the prearranged funeral plan that identifies the life insurance policy or
15 annuity used to fund the plan.

16 (b) A funeral director or operator of a funeral establishment shall make a record
17 maintained under par. (a) available to the examining board if the board submits a
18 written request to examine the record to the funeral director or operator of a funeral
19 establishment at least 3 days before the examination is to occur.

20 **(8)** The examining board may promulgate rules to administer this section.

21 **SECTION 6.** 632.41 (2) of the statutes is renumbered 632.41 (2) (a) and amended
22 to read:

23 632.41 **(2)** (a) ~~No~~ Except as provided in par. (b), no contract in which the insurer
24 agrees to pay for any of the incidents of burial or other disposition of the body of a

