

1999 SENATE BILL 483

March 21, 2000 – Introduced by Senators SHIBILSKI, SCHULTZ and RUDE, cosponsored by Representatives MUSSER, KEDZIE, OLSEN, RYBA and GUNDERSON. Referred to Committee on Economic Development, Housing and Government Operations.

1 **AN ACT** *to renumber and amend* 445.01 (6); *to amend* 59.39, 157.067 (title),
2 157.067 (1) and (2), 157.067 (2m) (intro.), 157.067 (2m) (b), 157.067 (2m) (c),
3 440.08 (2) (a) 37., 445.01 (2), 445.01 (5) (c), 445.01 (7), 445.04 (1), 445.06,
4 445.095 (2) (b), 445.095 (2) (c), 445.095 (2) (d), 445.105 (1), 445.105 (2), (3), (4)
5 and (5), 445.12 (3) (intro.), 445.12 (3) (b), 445.12 (3g) (a) (intro.), 445.12 (3g) (b)
6 (intro.), 445.12 (3g) (c), 445.12 (3r) (intro.), 445.12 (3r) (a), 445.12 (4), 445.12 (6),
7 445.12 (7), 445.13 (1), 445.15 (1m), 614.82 (2), 632.41 (2) (b) 1. and 632.41 (2)
8 (b) 3.; and *to create* 440.08 (2) (a) 37m., 445.01 (2r), 445.095 (2) (e), 445.105
9 (1m) and 445.125 (3m) (a) 3m. of the statutes; **relating to:** permits for certain
10 funeral services held in certain establishments.

Analysis by the Legislative Reference Bureau

Under current law, no person may operate a funeral establishment without a permit granted by the funeral directors examining board (board) in the department of regulation and licensing (DORL). A funeral establishment is defined as a building or part of a building used for preparing dead human bodies for burial or transportation or for holding funeral services. The board may grant a permit to the

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operator of a funeral establishment only if a funeral director licensed by the board is in full-time charge of the establishment. In addition, the business of a funeral director may be conducted only in a funeral establishment. Also under current law, certain requirements apply to funeral establishments. For example, the operator of a cemetery may not permit a funeral establishment to be located in the cemetery.

This bill creates definitions for two types of funeral establishments: class A and class B funeral establishments. A class A funeral establishment has the same definition as a funeral establishment under current law. The bill defines a class B funeral establishment as a building or part of a building, other than a class A funeral establishment, in which the operator of a class A funeral establishment conducts funeral services. The bill requires a funeral director to conduct his or her business as a funeral director in a class A funeral establishment, except for funeral services that are conducted in a class B funeral establishment. All of the other requirements that apply to funeral establishments under current law apply to class A funeral establishments under the bill. Therefore, for example, the operator of a cemetery may not permit a class A funeral establishment to be located in the cemetery.

The bill prohibits the operator of a class A funeral establishment from conducting funeral services in a class B funeral establishment unless the board has issued a permit for the class B funeral establishment. A class B funeral establishment permit, like any other credential issued by a board in DORL, must be renewed every two years. The board is prohibited from requiring a class B funeral establishment to have a licensed funeral director in full-time charge of the establishment. An operator of a class A funeral establishment that is issued a permit for a class B funeral establishment must conspicuously display the permit in the class B funeral establishment. In addition, any licensed funeral director employed by the operator of the class A funeral establishment may display his or her funeral director's license in the class B funeral establishment.

Also under current law, certain requirements apply to funeral director apprentices, including the requirement that, in each year, the board may recognize only one apprentice at a funeral establishment that has had less than 150 funeral services or a funeral establishment at which less than 150 bodies were prepared for burial or shipment in the preceding year. The board may recognize a second funeral director apprentice at a funeral establishment if these numbers are equaled or exceeded. Under this bill, for purposes of determining compliance with these requirements, the number of funeral services conducted at a class A funeral establishment includes the number of funeral services conducted at a class B funeral establishment for which the operator of the class A funeral establishment has been issued a permit under the bill.

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:

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1 **SECTION 1.** 59.39 of the statutes is amended to read:

2 **59.39 Coroner or medical examiner as funeral director, limitation.** No
3 coroner, deputy coroner, medical examiner or assistant medical examiner who is a
4 licensed funeral director, an owner or operator of a class A funeral establishment as
5 defined in s. 445.01 (2g), or an employe of a class A funeral establishment, and no
6 class A funeral establishment with which such a coroner, deputy coroner, medical
7 examiner or assistant medical examiner is associated, shall perform any of the
8 services of a funeral director upon the body of any person whose death is required by
9 law to be investigated by such coroner, his or her deputy, medical examiner or
10 assistant medical examiner. Any person who violates this section shall be fined not
11 more than \$50.

12 **SECTION 2.** 157.067 (title) of the statutes is amended to read:

13 **157.067 (title) Connection with class A funeral establishment**
14 **prohibited.**

15 **SECTION 3.** 157.067 (1) and (2) of the statutes are amended to read:

16 **157.067 (1)** In this section, “class A funeral establishment” has the meaning
17 given in s. 445.01 (6) (2g).

18 **(2)** No cemetery authority may permit a class A funeral establishment to be
19 located in the cemetery. No cemetery authority may have or permit an employe or
20 agent of the cemetery to have any ownership, operation or other financial interest
21 in a class A funeral establishment. Except as provided in sub. (2m), no cemetery
22 authority or employe or agent of a cemetery may, directly or indirectly, receive or
23 accept any commission, fee, remuneration or benefit of any kind from a class A
24 funeral establishment or from an owner, employe or agent of a class A funeral
25 establishment.

SENATE BILL 483**SECTION 4**

1 **SECTION 4.** 157.067 (2m) (intro.) of the statutes is amended to read:

2 157.067 **(2m)** (intro.) A cemetery authority may accept a fee or remuneration
3 from a class A funeral establishment or from an owner, employe or agent of a class
4 A funeral establishment if all of the following requirements are satisfied:

5 **SECTION 5.** 157.067 (2m) (b) of the statutes is amended to read:

6 157.067 **(2m)** (b) The fee or remuneration payment is made on behalf of the
7 person who is responsible for paying for the class A funeral establishment's services.

8 **SECTION 6.** 157.067 (2m) (c) of the statutes is amended to read:

9 157.067 **(2m)** (c) The class A funeral establishment will be reimbursed for the
10 fee or remuneration by charging the person who is responsible for paying the funeral
11 expenses an amount that is identical to the amount of the fee or remuneration paid
12 by the class A funeral establishment to the cemetery authority.

13 **SECTION 7.** 440.08 (2) (a) 37. of the statutes, as affected by 1999 Wisconsin Act
14 9, is amended to read:

15 440.08 **(2)** (a) 37. Funeral establishment, class A: June 1 of each odd-numbered
16 year; \$47.

17 **SECTION 8.** 440.08 (2) (a) 37m. of the statutes is created to read:

18 440.08 **(2)** (a) 37m. Funeral establishment, class B: June 1 of each
19 odd-numbered year; \$47.

20 **SECTION 9.** 445.01 (2) of the statutes is amended to read:

21 445.01 **(2)** An "apprentice funeral director" is any person engaged in the
22 learning of the practice of funeral directing under the instruction and personal
23 supervision of a duly licensed and registered funeral director under this chapter,
24 whose class A funeral establishment is located in this state; provided, that no person
25 shall serve or attempt to serve as such apprentice funeral director under any such

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1 funeral director until the person has filed registration thereof with the examining
2 board.

3 **SECTION 10.** 445.01 (2r) of the statutes is created to read:

4 445.01 (2r) “Class B funeral establishment” means any building or part of a
5 building, other than a class A funeral establishment, private residence, church or
6 lodge hall, in which an operator of a class A funeral establishment holds or conducts
7 funeral services.

8 **SECTION 11.** 445.01 (5) (c) of the statutes is amended to read:

9 445.01 (5) (c) A person who, in connection with his or her name or class A
10 funeral establishment, uses the words, “funeral director”, “mortician” or any other
11 title implying that he or she is engaged as a funeral director as defined in this
12 subsection.

13 **SECTION 12.** 445.01 (6) of the statutes is renumbered 445.01 (2g) and amended
14 to read:

15 445.01 (2g) “~~Funeral~~ Class A funeral establishment” means any building or
16 part of a building used and held out to the public as being used in the care and
17 preparation for burial or transportation of dead human bodies or for holding or
18 conducting of funeral services. “~~Funeral~~ Class A funeral establishment” does not
19 include a class B funeral establishment or a building or part of a building that is
20 erected under s. 157.11 (1) for holding or conducting funeral services if dead human
21 bodies are not cared for or prepared for burial or transportation in the building. A
22 class A funeral establishment must contain a preparation room equipped with tile,
23 cement or composition floor, necessary drainage and ventilation and contain
24 necessary instruments and supplies for the preparation and embalming of dead
25 human bodies for burial, transportation or other disposition.

SENATE BILL 483**SECTION 13**

1 **SECTION 13.** 445.01 (7) of the statutes is amended to read:

2 445.01 (7) “Operator of class A funeral establishment” means any person who
3 conducts, maintains, manages or operates a class A funeral establishment.

4 **SECTION 14.** 445.04 (1) of the statutes is amended to read:

5 445.04 (1) The Except for funeral services held or conducted in a class B funeral
6 establishment for which a permit has been issued under s. 445.105 (1m), the business
7 of a funeral director must be conducted in a class A funeral establishment equipped
8 for the care and preparation for burial or transportation of dead human bodies. What
9 shall be deemed “necessary equipment” shall be defined in the rules.

10 **SECTION 15.** 445.06 of the statutes is amended to read:

11 **445.06 Renewal of licenses.** The renewal date and renewal fee for a funeral
12 directors’ license are specified under s. 440.08 (2) (a). Before any renewal license is
13 delivered to any licensed funeral director, proof must be furnished by the applicant,
14 to the satisfaction of the examining board, that the applicant is doing business at a
15 recognized class A funeral establishment, except that if such applicant is not doing
16 business at a recognized class A funeral establishment at the time of application for
17 a license, the applicant shall be given a certificate, without additional cost, to the
18 effect that the applicant is in good standing as a funeral director, and shall be entitled
19 to a renewal license at any time during that license period, when located at a
20 recognized class A funeral establishment, without payment of any additional
21 renewal fee. The applicant must also furnish proof of completion of at least 15 hours
22 of continuing education during the previous 2–year licensure period, except that new
23 licensees are exempt from this requirement during the time between initial licensure
24 and commencement of a full 2–year licensure period.

25 **SECTION 16.** 445.095 (2) (b) of the statutes is amended to read:

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1 445.095 (2) (b) The term of a registered apprentice shall be recognized only
2 when given employment in a class A funeral establishment under the personal
3 supervision of a licensed funeral director.

4 **SECTION 17.** 445.095 (2) (c) of the statutes is amended to read:

5 445.095 (2) (c) Only one funeral director apprenticeship shall be recognized by
6 the examining board at any one class A funeral establishment in a current year that
7 has had less than 150 funeral services, as determined under par. (e), or prepared less
8 than 150 bodies for burial or shipment during the preceding year.

9 **SECTION 18.** 445.095 (2) (d) of the statutes is amended to read:

10 445.095 (2) (d) The examining board may recognize a 2nd funeral director
11 apprenticeship at a class A funeral establishment during the current year that has
12 had 150 funerals or more, as determined under par. (e), and has prepared 150 bodies
13 or more for burial or shipment during the preceding year, provided that full-time
14 employment is given to at least 2 licensed funeral directors at such class A funeral
15 establishment.

16 **SECTION 19.** 445.095 (2) (e) of the statutes is created to read:

17 445.095 (2) (e) For purposes of pars. (c) and (d), the number of funeral services
18 held at a class A funeral establishment during a year shall include the number of
19 funeral services held during that year at any class B funeral establishment for which
20 the operator of the class A funeral establishment has been issued a permit under s.
21 445.105 (1m).

22 **SECTION 20.** 445.105 (1) of the statutes is amended to read:

23 445.105 (1) No person shall conduct, maintain, manage or operate a class A
24 funeral establishment unless a permit for each such class A funeral establishment
25 has been issued by the examining board and is conspicuously displayed in such class

SENATE BILL 483**SECTION 20**

1 A funeral establishment. In case of funeral services held in any private residence,
2 church, or lodge hall, no permit shall be required.

3 **SECTION 21.** 445.105 (1m) of the statutes is created to read:

4 445.105 **(1m)** No operator of a class A funeral establishment may hold or
5 conduct funeral services in any class B funeral establishment unless a permit for the
6 class A funeral establishment has been issued under sub. (1) and the operator of the
7 class A funeral establishment has been issued a permit for each class B funeral
8 establishment by the examining board under this subsection. The examining board
9 may not require a class B funeral establishment to have in charge, full time therein,
10 a licensed funeral director as a condition for issuing a permit under this subsection.
11 An operator of a class A funeral establishment that has been issued a permit for a
12 class B funeral establishment under this subsection shall conspicuously display the
13 permit in the class B funeral establishment and any licensed funeral director
14 employed by the operator of the class A funeral establishment may display his or her
15 funeral director's license in the class B funeral establishment.

16 **SECTION 22.** 445.105 (2), (3), (4) and (5) of the statutes are amended to read:

17 445.105 **(2)** No permit to operate a class A funeral establishment shall be issued
18 by the examining board unless each such class A funeral establishment has in
19 charge, full time therein, a licensed funeral director.

20 **(3)** Applications for class A and class B funeral establishment permits shall be
21 made on forms provided by the department and filed with the department and shall
22 be accompanied by the fee specified under s. 440.05 (1). The renewal date and
23 renewal fee for a class A or class B funeral establishment permit are specified under
24 s. 440.08 (2) (a).

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1 **(4)** Violations of this chapter or any rules or regulations of the examining board
2 committed by any person, or an officer, agent or employe with the knowledge or
3 consent of any person operating such class A or class B funeral establishments shall
4 be considered sufficient cause for reprimand or for limitation, suspension or
5 revocation of ~~such funeral establishment permit~~ the permits.

6 **(5)** No operator of a class A funeral establishment shall allow any licensed
7 funeral director to operate out of such the class A funeral establishment unless such
8 the licensed funeral director is the operator of or an employe of the operator of a class
9 A funeral establishment which has been granted a permit by the examining board.

10 **SECTION 23.** 445.12 (3) (intro.) of the statutes is amended to read:

11 445.12 **(3)** (intro.) No licensed funeral director or operator of a class A funeral
12 establishment may, directly or indirectly, solicit a funeral service or the right to
13 prepare a dead human body for burial or transportation either before or after death
14 has occurred, or pay or cause to be paid any sum of money or other valuable
15 consideration for the securing of the right to do such work. This subsection does not
16 prohibit any of the following:

17 **SECTION 24.** 445.12 (3) (b) of the statutes is amended to read:

18 445.12 **(3)** (b) The solicitation or sale of burial agreements under s. 445.125 (1)
19 by a licensed funeral director, operator of a class A funeral establishment or agent
20 of a licensed funeral director or operator of a class A funeral establishment and the
21 solicitation and sale of burial agreements under s. 445.125 (3m) to the extent
22 permitted under sub. (3g) and s. 445.125 (3m).

23 **SECTION 25.** 445.12 (3g) (a) (intro.) of the statutes is amended to read:

24 445.12 **(3g)** (a) (intro.) Except as provided in pars. (b) and (c), a licensed funeral
25 director, agent of a licensed funeral director, operator of a class A funeral

SENATE BILL 483**SECTION 25**

1 establishment or agent of an operator of a class A funeral establishment may not
2 solicit the sale of a burial agreement under s. 445.125 (3m) by doing any of the
3 following:

4 **SECTION 26.** 445.12 (3g) (b) (intro.) of the statutes is amended to read:

5 445.12 **(3g)** (b) (intro.) A licensed funeral director, agent of a licensed funeral
6 director, operator of a class A funeral establishment or agent of an operator of a class
7 A funeral establishment may solicit the sale of a burial agreement under s. 445.125
8 (3m) by contacting any person if any of the following applies:

9 **SECTION 27.** 445.12 (3g) (c) of the statutes is amended to read:

10 445.12 **(3g)** (c) Paragraph (a) 3. does not prohibit a licensed funeral director,
11 agent of a licensed funeral director, operator of a class A funeral establishment or
12 agent of an operator of a class A funeral establishment from using mass–marketing
13 practices or in–person contacts or communications permitted under this section or
14 by a rule promulgated by the examining board under s. 445.125 (3m) (j) 2.

15 **SECTION 28.** 445.12 (3r) (intro.) of the statutes is amended to read:

16 445.12 **(3r)** (intro.) No licensed funeral director or operator of a class A funeral
17 establishment may do any of the following:

18 **SECTION 29.** 445.12 (3r) (a) of the statutes is amended to read:

19 445.12 **(3r)** (a) Require a person who enters into a burial agreement under s.
20 445.125 (3m) to purchase a life insurance policy used to fund the agreement from an
21 insurance intermediary licensed under ch. 628 who is specified by the funeral
22 director or operator of the class A funeral establishment.

23 **SECTION 30.** 445.12 (4) of the statutes is amended to read:

24 445.12 **(4)** No licensed funeral director or operator of a class A funeral
25 establishment may publish, or cause to be published, any false, misleading or

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1 fraudulent advertisement, or take undue advantage of patrons or commit any
2 fraudulent act in the conduct of business, or do any other act not in accord with the
3 rules established by the department of health and family services and the examining
4 board and not in accord with proper business practice as applied to the business or
5 profession of funeral directing and embalming.

6 **SECTION 31.** 445.12 (6) of the statutes is amended to read:

7 445.12 **(6)** No licensed funeral director or operator of a class A funeral
8 establishment may operate a mortuary or class A or class B funeral establishment
9 that is located in a cemetery or that is financially, through an ownership or operation
10 interest or otherwise, connected with a cemetery. No licensed funeral director or his
11 or her employe may, directly or indirectly, receive or accept any commission, fee,
12 remuneration or benefit of any kind from any cemetery, mausoleum or crematory or
13 from any owner, employe or agent thereof in connection with the sale or transfer of
14 any cemetery lot, outer burial container, burial privilege or cremation, nor act,
15 directly or indirectly, as a broker or jobber of any cemetery property or interest
16 therein.

17 **SECTION 32.** 445.12 (7) of the statutes is amended to read:

18 445.12 **(7)** No licensed funeral director or operator of a class A funeral
19 establishment may sell or cause to be sold any shares of stocks, certificates of
20 membership or any other form of certificate which provides for any burial benefit or
21 any rebate at the time of death to the holders thereof. This subsection does not
22 prohibit the sale of burial agreements to the extent permitted under, and that are in
23 conformity with, s. 445.125 (3m).

24 **SECTION 33.** 445.125 (3m) (a) 3m. of the statutes is created to read:

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1 445.125 **(3m)** (a) 3m. “Funeral establishment” means a class A funeral
2 establishment.

3 **SECTION 34.** 445.13 (1) of the statutes is amended to read:

4 445.13 **(1)** Subject to the rules promulgated under s. 440.03 (1), the examining
5 board may make investigations, subpoena witnesses, conduct hearings, limit,
6 suspend or revoke a license of a funeral director, a certificate of registration of an
7 apprentice or a permit of an operator of a class A or class B funeral establishment
8 and reprimand a funeral director, apprentice or operator of a class A or class B
9 funeral establishment for any violation of 15 USC 45 and 57, of this chapter or of any
10 rule of the department of health and family services or the examining board, for
11 unprofessional conduct, including misrepresentation or fraud in obtaining the
12 license, permit or certificate of registration, or for any violation of this chapter or any
13 rule of the examining board by an agent authorized by the funeral director or
14 operator of the class A or class B funeral establishment under s. 445.125 (3m) (b) 2.
15 a.

16 **SECTION 35.** 445.15 (1m) of the statutes is amended to read:

17 445.15 **(1m)** A funeral director or operator of a class A funeral establishment
18 who violates s. 445.12 (3r) shall be fined not more than \$5,000 for each violation.
19 Each day that an insurance intermediary authorized by a funeral director or
20 operator of a class A funeral establishment fails to meet the training requirements
21 established by the examining board by rule under s. 445.125 (3m) (j) 1. a. constitutes
22 a separate violation of s. 445.12 (3r) (b).

23 **SECTION 36.** 614.82 (2) of the statutes is amended to read:

24 614.82 **(2)** INSTITUTIONS FOR CARRYING OUT FRATERNAL ACTIVITIES. A fraternal
25 may create, maintain and operate social, intellectual, educational, charitable,

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1 benevolent, moral, fraternal, patriotic or religious institutions for the benefit of its
2 members or their families or dependents or for children insured by the fraternal. For
3 that purpose, it may own, hold or lease real or personal property within or outside
4 of this state. No funeral or undertaking or class A or class B funeral establishment
5 may be owned or operated by the fraternal. All such property shall be reported in
6 the annual statement or an appendix thereto but shall be given only nominal value
7 in the statement. No profit may be made on such institutions, but the income and
8 expenditures shall be reported separately in or as an appendix to the annual
9 statement. Any such institution may be separately incorporated under ch. 181 and
10 ownership of its stock shall be reported at nominal value.

11 **SECTION 37.** 632.41 (2) (b) 1. of the statutes is amended to read:

12 632.41 (2) (b) 1. A life insurance policy may provide for the assignment of the
13 proceeds of the policy to a funeral director or operator of a class A funeral
14 establishment if the insurance intermediary who sells or solicits the sale of the policy
15 is not an agent of the funeral director or operator of the class A funeral establishment
16 or if the assignment of proceeds is contingent on the provision of funeral merchandise
17 or funeral services as provided for in a burial agreement that satisfies the
18 requirements of s. 445.125 (3m) and rules promulgated by the funeral directors
19 examining board under s. 445.125 (3m) (j) 1. b.

20 **SECTION 38.** 632.41 (2) (b) 3. of the statutes is amended to read:

21 632.41 (2) (b) 3. A life insurance policy sold under subd. 1. shall permit the
22 policyholder to designate a different beneficiary, after written notice to the current
23 beneficiary, and a different funeral director or operator of a class A funeral
24 establishment that is to receive the assignment of proceeds, after written notice to
25 the current funeral director or operator of the class A funeral establishment.

