

D-NOTE

P2

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 **AN ACT to repeal** 49.30 (1m) (b); **to renumber** 49.30 (1m) (a); **to amend** 49.30

2 (1) (b), 49.30 (2), 440.92 (4) (a) (intro.), 445.01 (6), 445.04 (1), 445.095 (2) (e),

3 445.095 (2) (d), 445.105 (title), 445.105 (3), 445.105 (4), 445.12 (6), 445.125 (1)

4 (a) 2. and 445.13 (1); and **to create** 134.89, 157.114, 440.08 (2) (a) 37m., 445.01

5 (6m), 445.095 (2) (e), 445.105 (1m) and 445.125 (1) (am) of the statutes;

6 **relating to:** ~~reimbursement of certain funeral and burial expenses by counties~~

7 ~~and American Indian tribes, sales of cemetery merchandise, caskets and outer~~

8 ~~burial containers, provisions of burials by cemetery authorities, permits for~~

9 ~~certain funeral services held in funeral services facilities,~~ <sup>certain establishments,</sup> the amount of

10 irrevocable burial trusts, disclosures required for burial trusts ~~and~~ <sup>and</sup>

11 ~~rule-making authority~~ and providing a penalty.

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be prepared for a subsequent version of this draft.

INSERT 2-1

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. 49.30 (1) (b) of the statutes is amended to read:  
2 49.30 (1) (b) The lesser of \$1,000 \$3,500 or the funeral and burial expenses not  
3 paid by the estate of the deceased and other persons.

4 SECTION 2. 49.30 (1m) (a) of the statutes is renumbered 49.30 (1m).

5 SECTION 3. 49.30 (1m) (b) of the statutes is repealed.

6 SECTION 4. 49.30 (2) of the statutes is amended to read:

7 49.30 (2) From the appropriation under s. 20.445 (3) (dz), the department shall  
8 reimburse a county or applicable tribal governing body or organization for any  
9 amount that the county or applicable tribal governing body or organization is  
10 required to pay under sub. (1). From the appropriation under s. 20.445 (3) (dz), the  
11 department shall reimburse a county or applicable tribal governing body or  
12 organization for cemetery expenses or for funeral and burial expenses for persons  
13 described under sub. (1) that the county or applicable tribal governing body or  
14 organization is not required to pay under subs. (1) and (1m) only if the department  
15 approves the reimbursement due to unusual circumstances. The department shall  
16 promulgate rules establishing requirements and procedures with which a county  
17 must comply to be eligible for reimbursement under this subsection.

18 SECTION 5. ~~20.445~~ of the statutes is created to read:

19 ~~49.30 (2) (b)~~ Cemetery merchandise, caskets and outer burial containers.

20 (1) In this section:

21 (a) "Cemetery merchandise" has the meaning given in s. 157.061 (3).

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1 (b) "Outer burial container" has the meaning given in s. 157.061 (11g).

2 d-2 "Person" does not include a person issued a funeral director's license under

3 ch. 445 or an operator of a funeral establishment, as defined in s. 445.01. (2g)

4 ~~(2) No person may sell or offer to sell a casket, outer burial container or~~  
5 ~~cemetery merchandise unless the person furnishes to the buyer a notice set out in~~  
6 ~~not less than 8-point boldface type that states each of the following:~~

7 (a) That the seller is not a funeral director, is not licensed by the funeral  
8 directors examining board and may not engage in the business of a funeral director.

9 (b) That the seller is not subject to state laws and rules governing funeral  
10 establishments.

11 (c) If a casket is sold, that federal law prohibits a funeral director from charging  
12 a handling fee for a casket that is supplied by a party other than the funeral director.

13 (d) That the buyer enters into an agreement to purchase the casket, outer  
14 burial container or cemetery merchandise at his or her own risk.

15 (e) That the buyer may contact the department of agriculture, trade and  
16 consumer protection regarding complaints about unfair trade practices.

17 (f) If the person is a cemetery authority, cemetery salesperson or preneed seller  
18 that is registered by the department of regulation and licensing under subch. VII of  
19 ch. 440, that the buyer may contact the department regarding a complaint about the  
20 sale but that, depending on the nature of the complaint, the department may not  
21 have any authority regarding the complaint.

22 (3) Any person who violates sub. (2) may be required to forfeit not more than  
23 \$5,000.

24 SECTION 6. 157.114 of the statutes is created to read:

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**157.114 Duty to provide for burials.** A cemetery authority shall, insofar as practicable, provide for burials during each season, including winter. Nothing in this section may be construed to prohibit a cemetery authority from charging a reasonable fee to recover the costs related to providing for a burial during difficult weather conditions.

~~SECTION 7. 440.08 (2) (a) 37m. of the statutes is created to read:~~

~~440.08 (2) (a) 37m. Funeral services facility: June 1 of each odd-numbered year; \$47.~~

~~SECTION 8. 440.92 (4) (a) (intro.) of the statutes is amended to read:~~

~~440.92 (4) (a) (intro.) Any person who sells or solicits the sale of cemetery merchandise under a preneed sales contract is not required to be registered under sub. (1) and the requirements of sub. (3) (a) and (b) do not apply to the sale if all payments received under the preneed sales contract are trusted as required under~~

~~s. 445.12 (4) (a) 1 and (am) and all of the following conditions are met.~~

SECTION 9. 445.01 (6) of the statutes is amended to read:

445.01 (6) <sup>2g</sup> Class A funeral "Funeral establishment" means any building or part of a building used and held out to the public as being used in the care and preparation for burial or transportation of dead human bodies or for holding or conducting of funeral services. <sup>Class A funeral</sup> "Funeral establishment" does not include a <sup>renumbered 445-01 (2g) and</sup> funeral ~~services facility~~ <sup>class B</sup> or a <sup>establishment</sup> building or part of a building that is erected under s. 157.11 (1) for holding or conducting funeral services if dead human bodies are not cared for or prepared for burial or transportation in the building. A <sup>class A</sup> funeral establishment must contain a preparation room equipped with tile, cement or composition floor, necessary drainage and ventilation and contain necessary instruments and supplies for the

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1 preparation and embalming of dead human bodies for burial, transportation or other  
2 disposition.

3 SECTION 10. 445.01 (6m) of the statutes is created to read:

4 445.01 (6m) <sup>Class B funeral</sup> "funeral services facility" means any building or part of a  
5 building, other than a funeral establishment, private residence, church or lodge hall,  
6 in which an operator of a funeral establishment holds or conducts funeral services.

7 SECTION 11. 445.04 (1) of the statutes is amended to read:

8 445.04 (1) <sup>class B</sup> The Except for funeral services held or conducted in a funeral  
9 services facility <sup>establishment</sup> for which a permit has been issued under s. 445.105 (1m), the  
10 business of a funeral director must be conducted in a <sup>class A</sup> funeral establishment equipped  
11 for the care and preparation for burial or transportation of dead human bodies. What  
12 shall be deemed "necessary equipment" shall be defined in the rules.

INSERT 5-12

13 SECTION 12. 445.095 (2) (c) of the statutes is amended to read:

14 445.095 (2) (c) Only one funeral director apprenticeship shall be recognized by  
15 the examining board at any one <sup>class A funeral</sup> establishment in a current year that has had less  
16 than 150 funeral services, as determined under par. (e), or prepared less than 150  
17 bodies for burial or shipment during the preceding year.

18 SECTION 13. 445.095 (2) (d) of the statutes is amended to read:

19 445.095 (2) (d) The examining board may recognize a 2nd funeral director  
20 apprenticeship at a <sup>class A</sup> funeral establishment during the current year that has had 150  
21 funerals or more, as determined under par. (e), and has prepared 150 bodies or more  
22 for burial or shipment during the preceding year, provided that full-time  
23 employment is given to at least 2 licensed funeral directors at such <sup>class A</sup> funeral  
24 establishment.

25 SECTION 14. 445.095 (2) (e) of the statutes is created to read:

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1 445.095 (2) (e) For purposes of pars. (c) and (d), the number of funeral services  
 2 held at a funeral establishment during a year shall include the number of funeral  
 3 services held during that year at any funeral services facility for which the operator  
 4 of the funeral establishment has been issued a permit under s. 445.105 (1m).

5 SECTION 15. 445.105 (title) of the statutes is amended to read:

6 445.105 (title) **Funeral establishment and funeral services facility**  
 7 **permits.**

8 SECTION 16. 445.105 (1m) of the statutes is created to read:

9 445.105 (1m) No operator of a funeral establishment may hold or conduct  
 10 funeral services in a funeral services facility unless a permit for the funeral  
 11 establishment has been issued under sub. (1) and the operator of the funeral  
 12 establishment has been issued a permit for the funeral services facility by the  
 13 examining board under this subsection. An operator of a funeral establishment that  
 14 has been issued a permit for a funeral services facility under this subsection shall  
 15 conspicuously display the permit in the funeral services facility.

16 SECTION 17. 445.105 (3) of the statutes is amended to read:

17 445.105 (3) Applications for funeral establishment and funeral services facility  
 18 permits shall be made on forms provided by the department and filed with the  
 19 department and shall be accompanied by the fee specified under s. 440.05 (1). The  
 20 renewal date and renewal fee for a funeral establishment or funeral services facility  
 21 permit are specified under s. 440.08 (2) (a).

22 SECTION 18. 445.105 (4) of the statutes is amended to read:

23 445.105 (4) Violations of this chapter or any rules or regulations of the  
 24 examining board committed by any person, or an officer, agent or employe with the  
 25 knowledge or consent of any person operating such funeral establishments or funeral

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1 services facilities shall be considered sufficient cause for reprimand or for limitation,  
2 suspension or revocation of such funeral establishment or funeral services facility  
3 permit.

4 **SECTION 19.** 445.12 (6) of the statutes is amended to read:

5 445.12 (6) No licensed funeral director or operator of a <sup>class A</sup> funeral establishment  
6 may operate a mortuary <sup>place</sup> or funeral establishment ~~or funeral services facility~~ that is  
7 located in a cemetery or that is financially, through an ownership or operation  
8 interest or otherwise, connected with a cemetery. No licensed funeral director or his  
9 or her employe may, directly or indirectly, receive or accept any commission, fee,  
10 remuneration or benefit of any kind from any cemetery, mausoleum or crematory or  
11 from any owner, employe or agent thereof in connection with the sale or transfer of  
12 any cemetery lot, outer burial container, burial privilege or cremation, nor act,  
13 directly or indirectly, as a broker or jobber of any cemetery property or interest  
14 therein.

15 **SECTION 20.** 445.125 (1) (a) 2. of the statutes is amended to read:

16 445.125 (1) (a) 2. Notwithstanding s. 701.12 (1), ~~such agreements an~~  
17 ~~agreement under subd. 1.~~ may be made irrevocable as to the first \$2,000 of the funds  
18 paid under the agreement by each depositor.

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19 **SECTION 21.** 445.125 (1) (am) of the statutes is created to read:

20 445.125 (1) (am) Before a beneficiary accepts any payment under an agreement  
21 under par. (a), the beneficiary shall, in writing that is clear and conspicuous, <sup>provide</sup> disclose  
22 to the depositor <sup>each of the following:</sup> (1) 1. An itemized list of all merchandise and services that are provided under the  
23 agreement <sup>(2) 2. All</sup> relevant information concerning the price of the merchandise and  
24 services, including a statement as to whether the purchase price of the merchandise

INSERT 7-23

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1 and services is guaranteed at the time that the first payment under the agreement  
2 is made or whether the purchase price is to be determined at the time of need.

3 SECTION 22. 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 funeral establishment, <sup>class A or B</sup> including a permit  
8 ~~issued for a funeral services facility~~ and reprimand a funeral director, apprentice or  
9 operator of a funeral establishment <sup>class A or B</sup> for any violation of 15 USC 45 and 57, of this  
10 chapter or of any rule of the department of health and family services or the  
11 examining board, for unprofessional conduct, including misrepresentation or fraud  
12 in obtaining the license, permit or certificate of registration, or for any violation of  
13 this chapter or any rule of the examining board by an agent authorized by the funeral  
14 director or operator of the funeral establishment <sup>class A or B</sup> under s. 445.125 (3m) (b) 2. a.

15 SECTION 23. Initial applicability.

16 (1) The treatment of sections 49.30 (1) (b), (1m) (b) and (2) of the statutes first  
17 applies to funeral and burial expenses incurred on the the effective date of this  
18 subsection.

19 (2) The treatment of section ~~440.92~~ <sup>440.947</sup> of the statutes first applies to sales or offers  
20 to sell that are made on the effective date of this subsection.

21 (3) The treatment of sections 440.92 (4) (a) (intro.) and 445.125 (1) (a) 2. and  
22 (am) of the statutes first applies to contracts and agreements entered into on the  
23 effective date of this subsection.

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LEGISLATIVE REFERENCE BUREAU**

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1 **INSERT 2-1:**

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

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

History: 1973 c. 272; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1983 a. 485; 1995 a. 201 s. 308; Stats. 1995 s. 59.39.

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

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

History: 1993 a. 100, 386.

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

17 157.067 (1) In this section, "class A funeral establishment" has the meaning  
18 given in s. 445.01 (~~6~~) (2g).

History: 1993 a. 100, 386.

19 **(2)** No cemetery authority may permit a class A funeral establishment to be  
20 located in the cemetery. No cemetery authority may have or permit an employe or  
21 agent of the cemetery to have any ownership, operation or other financial interest  
22 in a class A funeral establishment. Except as provided in sub. (2m), no cemetery

INSERT 2-8 *after page 14 of inserts*

1 authority or employe or agent of a cemetery may, directly or indirectly, receive or  
2 accept any commission, fee, remuneration or benefit of any kind from a class A  
3 funeral establishment or from an owner, employe or agent of a class A funeral  
4 establishment.

History: 1993 a. 100, 386.

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

6 157.067 (2m) (intro.) A cemetery authority may accept a fee or remuneration  
7 from a class A funeral establishment or from an owner, employe or agent of a class  
8 A funeral establishment if all of the following requirements are satisfied:

History: 1993 a. 100, 386.

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

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

History: 1993 a. 100, 386.

**INSERT 3-1:**

14 **SECTION 6.** 440.08 (2) (a) 37. of the statutes is amended to read:

15 440.08 (2) (a) 37. Funeral establishment, class A: June 1 of each odd-numbered  
16 year; \$41.

History: 1991 a. 39 ss. 3305, 3313; 1991 a. 78, 160, 167, 269, 278, 315; 1995 a. 3, 16, 102, 105, 107, 443, 463, 465; 1993 a. 490 ss. 228 to 230, 274, 275; 1995 a. 27, 233, 321, 322, 461; 1997 a. 27, 75, 81, 96, 156, 191, 237, 261, 300; s. 13.93 (1) (M).

17 **SECTION 7.** 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 8.** 440.92 (4) (a) (intro.) of the statutes is amended to read:

21 440.92 (4) (a) (intro.) Any person who sells or solicits the sale of cemetery  
22 merchandise under a preneed sales contract is not required to be registered under  
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**SECTION 1.** 157.067 (2m) (b) of the statutes is amended to read:

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157.067 **(2m)** (b) The fee or remuneration payment is made on behalf of the

4

person who is responsible for paying for the class A funeral establishment's services.

History: 1993 a. 100, 386.

1 sub. (1) and the requirements of sub. (3) (a) and (b) do not apply to the sale if all  
2 payments received under the preneed sales contract are trusted as required under  
3 s. 445.125 (1) (a) 1. and (am) or if all of the following conditions are met:

4 History: 1989 a. 307; 1991 a. 16, 32, 39, 269; 1993 a. 16; 1995 a. 27 ss. 6605, 9116 (5); 1995 a. 295; 1997 a. 79, 191.

5 **SECTION 9. 440.947** of the statutes is created to read:

6 **440.947 Disclosures and representations for certain sales. (1)** In this  
7 section:

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

14 (b) "Direct cremation service" means the disposition of human remains by  
15 cremation without any formal viewing, visitation or ceremony in which the body of  
16 the deceased is present.

17 (c) "Mausoleum" has the meaning given in s. 157.061 (9).

18 **INSERT 3-3:**

19 (2) No person may sell or offer for sale a casket, outer burial container or  
20 cemetery merchandise unless the person has provided to the buyer, prior to the sale,  
21 a price list in a clearly legible and conspicuous format that includes each of the  
22 following:

- 23 (a) The name, address and telephone number of the person's place of business.
- (b) The effective date of the price list.



1 (c) The price and a description of each type of casket, outer burial container and  
2 cemetery merchandise that the person usually offers for sale without special  
3 ordering. A description required under this paragraph shall enable a buyer to  
4 identify and understand the specific casket, outer burial container or cemetery  
5 merchandise that is offered for sale.

6 (d) If the person usually offers an outer burial container for sale without special  
7 ordering, a statement that is identical to the following: "State law does not require  
8 that you buy a container to surround the casket in the grave. However, many  
9 cemeteries require that you have such a container so that the grave will not sink in.  
10 Either a grave liner or a burial vault will satisfy these requirements."

11 (e) The price and a description of any direct cremation or burial service offered  
12 by the person and, if the person offers direct cremation service, a statement that is  
13 identical to the following: "If you want to arrange a direct cremation, you can use an  
14 alternative container. Alternative containers encase the body and can be made of  
15 materials like fiberboard or composition materials (with or without an outside  
16 covering). The containers that we provide are .... [insert a description of the  
17 containers offered for direct cremation]."

18 (f) The price and a description of any service offered by the person for the use  
19 any facilities, equipment or staff related to a viewing, funeral ceremony, memorial  
20 service or graveside service.

21 (g) The amount and a description of any basic service fee that is charged in  
22 addition to any price described under pars. (c), (e) or (f).

23 (3) A person who sells a casket, outer burial container or cemetery merchandise  
24 shall, immediately after completing the sale, provide the buyer with a form in a  
25 clearly legible and conspicuous format that includes each of the following:



1 (a) The price and a description of the casket, outer burial container or cemetery  
2 merchandise.

3 (b) The price and a description of any service specified in sub. (2) (e) or (f) that  
4 is sold in addition to the casket, outer burial container or cemetery merchandise.

5 (c) The amount and a description of any basic service fee that is charged in  
6 addition to any price described under par. (a) or (b).

7 (d) A statement that the buyer may be charged only for the items that he or she  
8 has selected or that are required by law and a description and explanation of any  
9 items that he or she is required by law to purchase.

10 (e) A description of any charge for a cash advance item, including any  
11 commission, discount or rebate that the person receives for a cash advance item from  
12 the 3rd party from which the cash advance item is obtained and that the person does  
13 not pass on to the buyer.

14 (4) No person who sells a casket, outer burial container or cemetery  
15 merchandise may do any of the following:

16 (a) Provide inaccurate information regarding the information specified in sub.  
17 (2) (c), (e), (f) or (g) to a prospective buyer who contacts the person by telephone.

18 (b) Represent that state or local law requires a prospective buyer to purchase  
19 a casket for a direct cremation service.

20 (c) Misrepresent to a prospective buyer any requirement under federal, state  
21 or local law or under the rules of any cemetery, mausoleum or crematory relating to  
22 the use of a casket, outer burial container or cemetery merchandise.

23 (d) Represent that any casket, outer burial container or cemetery merchandise  
24 will delay the natural decomposition of human remains for a long or indefinite period  
25 of time.

1 (e) Require a buyer to pay an additional fee or surcharge if the buyer purchases  
2 a casket, outer burial container or cemetery merchandise from a 3rd party.

3 (f) Alter a price specified in sub. (2) (c), (e), (f) or (g) based on the type of casket,  
4 outer burial container or cemetery merchandise purchased by a buyer.

5 (5) A person who sells a casket, outer burial container or cemetery merchandise  
6 shall retain a copy of the price list specified in sub. (2) (intro.) for at least one year  
7 after the date of its last distribution to a prospective buyer and shall retain a copy  
8 of each form that is provided to a buyer under sub. (3) (intro.) for at least one year  
9 after completion of a sale. A person required to retain a copy under this subsection  
10 shall make the copy available for inspection by the department upon request.

11 SECTION 10. 440.95 (3) of the statutes is amended to read:

12 440.95 (3) Except as provided in subs. (1) and (2), any person who violates s.  
13 440.91 or 440.947 or any rule promulgated under s. 440.91 may be fined not more  
14 than \$1,000 or imprisoned for not more than 6 months or both.

History: 1989 a. 307 ss. 75, 87.

**INSERT 4-14:**

15 SECTION 11. 445.01 (2) of the statutes is amended to read:

16 445.01 (2) An "apprentice funeral director" is any person engaged in the  
17 learning of the practice of funeral directing under the instruction and personal  
18 supervision of a duly licensed and registered funeral director under this chapter,  
19 whose class A funeral establishment is located in this state; provided, that no person  
20 shall serve or attempt to serve as such apprentice funeral director under any such  
21 funeral director until the person has filed registration thereof with the examining  
22 board.  
23

History: 1975 c. 39 ss. 648m, 649, 649g, 732 (2); 1975 c. 199; 1977 c. 272 s. 98; 1979 c. 175 ss. 29, 30, 53; 1979 c. 221 ss. 660, 2202 (45); Stats. 1979 s. 445.01; 1981 c. 20; 1983 a. 189, 485; 1993 a. 100.

24 SECTION 12. 445.01 (2r) of the statutes is created to read:



1           445.01 (2r) "Class B funeral establishment" means any building or part of a  
2 building, other than a class A funeral establishment, private residence, church or  
3 lodge hall, in which an operator of a class A funeral establishment holds or conducts  
4 funeral services.

5           **SECTION 13.** 445.01 (5) (c) of the statutes is amended to read:

6           445.01 (5) (c) A person who, in connection with his or her name or class A  
7 funeral establishment, uses the words, "funeral director", "mortician" or any other  
8 title implying that he or she is engaged as a funeral director as defined in this  
9 subsection.

History: 1975 c. 39 ss. 648m, 649, 649g, 732 (2); 1975 c. 199; 1977 c. 272 s. 98; 1979 c. 175 ss. 29, 30, 53; 1979 c. 221 ss. 660, 2202 (45); Stats. 1979 s. 445.01; 1981 c. 20; 1983 a. 189, 485; 1993 a. 100.

**INSERT 5-2:**

11           **SECTION 14.** 445.01 (7) of the statutes is amended to read:

12           445.01 (7) "Operator of class A funeral establishment" means any person who  
13 conducts, maintains, manages or operates a class A funeral establishment.

History: 1975 c. 39 ss. 648m, 649, 649g, 732 (2); 1975 c. 199; 1977 c. 272 s. 98; 1979 c. 175 ss. 29, 30, 53; 1979 c. 221 ss. 660, 2202 (45); Stats. 1979 s. 445.01; 1981 c. 20; 1983 a. 189, 485; 1993 a. 100.

**INSERT 5-12:**

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

16           **445.06 Renewal of licenses.** The renewal date and renewal fee for a funeral  
17 directors' license are specified under s. 440.08 (2) (a). Before any renewal license is  
18 delivered to any licensed funeral director, proof must be furnished by the applicant,  
19 to the satisfaction of the examining board, that the applicant is doing business at a  
20 recognized class A funeral establishment, except that if such applicant is not doing  
21 business at a recognized class A funeral establishment at the time of application for  
22 a license, the applicant shall be given a certificate, without additional cost, to the  
23 effect that the applicant is in good standing as a funeral director, and shall be entitled



1 to a renewal license at any time during that license period, when located at a  
2 recognized class A funeral establishment, without payment of any additional  
3 renewal fee. The applicant must also furnish proof of completion of at least 15 hours  
4 of continuing education during the previous 2-year licensure period, except that new  
5 licensees are exempt from this requirement during the time between initial licensure  
6 and commencement of a full 2-year licensure period.

7 History: 1975 c. 39 s. 732 (2); 1975 c. 199; 1977 c. 29; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.06; 1983 a. 485; 1985 a. 29; 1991 a. 39.

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

9 445.095 (2) (b) The term of a registered apprentice shall be recognized only  
10 when given employment in a class A funeral establishment under the personal  
supervision of a licensed funeral director.

11 History: 1971 c. 164, 228; 1975 c. 39 s. 732 (2); 1975 c. 199; 1977 c. 29; 1979 c. 175 ss. 29, 53; 1979 c. 221 ss. 662, 2202 (45); Stats. 1979 s. 445.095; 1981 c. 20, 162, 380; 1981 c. 391 s. 211; 1983 a. 485; 1991 a. 39; 1995 a. 27 s. 9130 (4); 1997 a. 3.

12 **INSERT 6-7:**

13 **SECTION 17.** 445.105 (1) of the statutes is amended to read:

14 445.105 (1) No person shall conduct, maintain, manage or operate a class A  
15 funeral establishment unless a permit for each such class A funeral establishment  
16 has been issued by the examining board and is conspicuously displayed in such class  
17 A funeral establishment. In case of funeral services held in any private residence,  
church, or lodge hall, no permit shall be required.

18 History: 1975 c. 39 s. 732 (2); 1977 c. 29, 418; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.105; 1987 a. 27; 1991 a. 39.

19 **INSERT 6-13:**

20 The examining board may not require a class B funeral establishment to have in  
21 charge, full time therein, a licensed funeral director as a condition for issuing a  
22 permit under this subsection.

**INSERT 6-15:**

1  
2

establishment and 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

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**INSERT 6-16:**

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**SECTION 18.** 445.105 (2), (3), (4) and (5) of the statutes <sup>all</sup> is amended to read:

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

History: 1975 c. 39 s. 732 (2); 1977 c. 29, 418; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.105; 1987 a. 27; 1991 a. 39.

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

History: 1975 c. 39 s. 732 (2); 1977 c. 29, 418; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.105; 1987 a. 27; 1991 a. 39.

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

History: 1975 c. 39 s. 732 (2); 1977 c. 29, 418; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.105; 1987 a. 27; 1991 a. 39.

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

History: 1975 c. 39 s. 732 (2); 1977 c. 29, 418; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.105; 1987 a. 27; 1991 a. 39.

23

**SECTION 19.** 445.12 (3) (intro.) of the statutes is amended to read:

1           445.12 (3) (intro.) No licensed funeral director or operator of a class A funeral  
 2 establishment may, directly or indirectly, solicit a funeral service or the right to  
 3 prepare a dead human body for burial or transportation either before or after death  
 4 has occurred, or pay or cause to be paid any sum of money or other valuable  
 5 consideration for the securing of the right to do such work. This subsection does not  
 6 prohibit any of the following:

History: 1973 c. 272; 1975 c. 39, 199; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.12; 1983 a. 485; 1989 a. 307; 1993 a. 100; 1995 a. 27 s. 9126 (19); 1995 a. 295.

7           **SECTION 20.** 445.12 (3) (b) of the statutes is amended to read:

8           445.12 (3) (b) The solicitation or sale of burial agreements under s. 445.125 (1)  
 9 by a licensed funeral director, operator of a class A funeral establishment or agent  
 10 of a licensed funeral director or operator of a class A funeral establishment and the  
 11 solicitation and sale of burial agreements under s. 445.125 (3m) to the extent  
 12 permitted under sub. (3g) and s. 445.125 (3m).

History: 1973 c. 272; 1975 c. 39, 199; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.12; 1983 a. 485; 1989 a. 307; 1993 a. 100; 1995 a. 27 s. 9126 (19); 1995 a. 295.

13           **SECTION 21.** 445.12 (3g) (a) (intro.) of the statutes is amended to read:

14           445.12 (3g) (a) (intro.) Except as provided in pars. (b) and (c), a licensed funeral  
 15 director, agent of a licensed funeral director, operator of a class A funeral  
 16 establishment or agent of an operator of a class A funeral establishment may not  
 17 solicit the sale of a burial agreement under s. 445.125 (3m) by doing any of the  
 18 following:

History: 1973 c. 272; 1975 c. 39, 199; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.12; 1983 a. 485; 1989 a. 307; 1993 a. 100; 1995 a. 27 s. 9126 (19); 1995 a. 295.

19           **SECTION 22.** 445.12 (3g) (b) (intro.) of the statutes is amended to read:

20           445.12 (3g) (b) (intro.) A licensed funeral director, agent of a licensed funeral  
 21 director, operator of a class A funeral establishment or agent of an operator of a class

1 A funeral establishment may solicit the sale of a burial agreement under s. 445.125  
2 (3m) by contacting any person if any of the following applies:

History: 1973 c. 272; 1975 c. 39, 199; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.12; 1983 a. 485; 1989 a. 307; 1993 a. 100; 1995 a. 27 s. 9126 (19); 1995 a. 295.

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

4 445.12 (3g) (c) Paragraph (a) 3. does not prohibit a licensed funeral director,  
5 agent of a licensed funeral director, operator of a class A funeral establishment or  
6 agent of an operator of a class A funeral establishment from using mass-marketing  
7 practices or in-person contacts or communications permitted under this section or  
8 by a rule promulgated by the examining board under s. 445.125 (3m) (j) 2.

History: 1973 c. 272; 1975 c. 39, 199; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.12; 1983 a. 485; 1989 a. 307; 1993 a. 100; 1995 a. 27 s. 9126 (19); 1995 a. 295.

9 **SECTION 24.** 445.12 (3r) (intro.) of the statutes is amended to read:

10 445.12 (3r) (intro.) No licensed funeral director or operator of a class A funeral  
11 establishment may do any of the following:

History: 1973 c. 272; 1975 c. 39, 199; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.12; 1983 a. 485; 1989 a. 307; 1993 a. 100; 1995 a. 27 s. 9126 (19); 1995 a. 295.

12 **SECTION 25.** 445.12 (3r) (a) of the statutes is amended to read:

13 445.12 (3r) (a) Require a person who enters into a burial agreement under s.  
14 445.125 (3m) to purchase a life insurance policy used to fund the agreement from an  
15 insurance intermediary licensed under ch. 628 who is specified by the funeral  
16 director or operator of the class A funeral establishment.

History: 1973 c. 272; 1975 c. 39, 199; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.12; 1983 a. 485; 1989 a. 307; 1993 a. 100; 1995 a. 27 s. 9126 (19); 1995 a. 295.

17 **SECTION 26.** 445.12 (4) of the statutes is amended to read:

18 445.12 (4) No licensed funeral director or operator of a class A funeral  
19 establishment may publish, or cause to be published, any false, misleading or  
20 fraudulent advertisement, or take undue advantage of patrons or commit any  
21 fraudulent act in the conduct of business, or do any other act not in accord with the  
22 rules established by the department of health and family services and the examining



1 board and not in accord with proper business practice as applied to the business or  
2 profession of funeral directing and embalming.

History: 1973 c. 272; 1975 c. 39, 199; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.12; 1983 a. 485; 1989 a. 307; 1993 a. 100; 1995 a. 27 s. 9126 (19); 1995 a. 295.

3 **INSERT 7-14:**

4 **SECTION 27.** 445.12 (7) of the statutes is amended to read:

5 445.12 (7) No licensed funeral director or operator of a class A funeral  
6 establishment may sell or cause to be sold any shares of stocks, certificates of  
7 membership or any other form of certificate which provides for any burial benefit or  
8 any rebate at the time of death to the holders thereof. This subsection does not  
9 prohibit the sale of burial agreements to the extent permitted under, and that are in  
10 conformity with, s. 445.125 (3m).

History: 1973 c. 272; 1975 c. 39, 199; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.12; 1983 a. 485; 1989 a. 307; 1993 a. 100; 1995 a. 27 s. 9126 (19); 1995 a. 295.

11 **INSERT 7-18:**

12 in an amount less than or equal to the total value of all merchandise or services that  
13 are provided by the beneficiary with respect to the potential decedent

14 **INSERT 7-23:**

15 , including any personal property or service that is obtained by the beneficiary from  
16 a 3rd party and that is paid by the beneficiary on behalf of, and subject to  
17 reimbursement from, the depositor.

18 **INSERT 8-2:**

19 **SECTION 28.** 445.125 (3m) (a) 3m. of the statutes is created to read:

20 445.125 (3m) (a) 3m. "Funeral establishment" means a class A funeral  
21 establishment.

22 **SECTION 29.** 445.125 (3q) of the statutes is created to read:



NOTICE REQUIRED.

C § 5

1 445.125 (3q) A funeral director or operator of a class A funeral establishment  
 2 shall notify the department of health and family services if the funeral director or  
 3 operator obtains knowledge that the funeral and burial expenses of a decedent who  
 4 is a recipient of medical assistance under subch. IV of ch. 49 are less than the amount  
 5 held in trust under an agreement under ~~s. 445.125~~ <sup>Sub.</sup> (1) (a) 1. or less than the amount  
 6 of the proceeds of a life insurance policy used to fund a burial agreement, as defined  
 7 under sub. (3m) (a) 2.

**INSERT 8-14:**

**SECTION 30.** 445.15 (1m) of the statutes is amended to read:

10 445.15 (1m) A funeral director or operator of a class A funeral establishment  
 11 who violates s. 445.12 (3r) shall be fined not more than \$5,000 for each violation.  
 12 Each day that an insurance intermediary authorized by a funeral director or  
 13 operator of a class A funeral establishment fails to meet the training requirements  
 14 established by the examining board by rule under s. 445.125 (3m) (j) 1. a. constitutes  
 15 a separate violation of s. 445.12 (3r) (b).

History: 1975 c. 39; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.15; 1985 a. 315; 1995 a. 27 s. 9126 (19); 1995 a. 295.

**SECTION 31.** 614.82 (2) of the statutes is amended to read:

17 614.82 (2) INSTITUTIONS FOR CARRYING OUT FRATERNAL ACTIVITIES. A fraternal  
 18 may create, maintain and operate social, intellectual, educational, charitable,  
 19 benevolent, moral, fraternal, patriotic or religious institutions for the benefit of its  
 20 members or their families or dependents or for children insured by the fraternal. For  
 21 that purpose, it may own, hold or lease real or personal property within or outside  
 22 of this state. No ~~funeral or undertaking or~~ class A or B funeral establishment may  
 23 be owned or operated by the fraternal. All such property shall be reported in the  
 24 annual statement or an appendix thereto but shall be given only nominal value in

1 the statement. No profit may be made on such institutions, but the income and  
2 expenditures shall be reported separately in or as an appendix to the annual  
3 statement. Any such institution may be separately incorporated under ch. 181 and  
4 ownership of its stock shall be reported at nominal value.

5 History: 1975 c. 373, 421; 1983 a. 189 s. 329 (25). ✓

**SECTION 32.** 632.41 (2) (b) 1. of the statutes is amended to read:

6 632.41 (2) (b) 1. A life insurance policy may provide for the assignment of the  
7 proceeds of the policy to a funeral director or operator of a class A funeral  
8 establishment if the insurance intermediary who sells or solicits the sale of the policy  
9 is not an agent of the funeral director or operator of the class A funeral establishment  
10 or if the assignment of proceeds is contingent on the provision of funeral merchandise  
11 or funeral services as provided for in a burial agreement that satisfies the  
12 requirements of s. 445.125 (3m) and rules promulgated by the funeral directors  
13 examining board under s. 445.125 (3m) (j) 1. b.

14 History: 1975 c. 373, 375, 422; 1979 c. 102; 1995 a. 295. ✓

**SECTION 33.** 632.41 (2) (b) 3. of the statutes is amended to read:

15 632.41 (2) (b) 3. A life insurance policy sold under subd. 1. shall permit the  
16 policyholder to designate a different beneficiary, after written notice to the current  
17 beneficiary, and a different funeral director or operator of a class A funeral  
18 establishment that is to receive the assignment of proceeds, after written notice to  
19 the current funeral director or operator of the class A funeral establishment.

History: 1975 c. 373, 375, 422; 1979 c. 102; 1995 a. 295.



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0832/1dn  
MDK.....

*cmf*

✓  
Senator Shibilski:

Please review this draft very carefully to make sure that it achieves your intent. In particular, please note the following:

1. The draft does not refer to a "unified trust" because I do not think that the meaning of that term is clear ("unified trust" does not appear in the statutes or the administrative code). Instead, under the proposed amendment of s. 445.125 (1) (a) 2., stats., a single trust agreement may be used for all of merchandise or services that are provided for a decedent. Is this okay?

2. I am not sure I understand your intent regarding a county's use of a unified trust for purposes of medical assistance. However, note that s. 49.47 (4) (b) 3., stats., refers to "the amount in any irrevocable burial trust under s. 445.125 (1) (a)". Under the draft, s. 445.125 (1) (a), stats., is amended to eliminate the cap on the amount of a trust that may be made irrevocable and to specify, as noted above, that a single trust may be used for all merchandise and services provided for a decedent. Therefore, it does not appear to me that any changes to the medical assistance statutes are necessary.

3. The amendment of s. 445.12 (3) (b), stats., is intended to clarify that the same persons that are allowed to sell burial agreements funded with insurance may also sell burial agreements funded with trusts. Is the amendment okay? Note that I could not find any administrative rule that allows only a funeral director to sell a burial agreement funded with a trust.

4. Are the penalties in the proposed amendment of s. 440.95 (3), stats., okay?

5. Note that the requirements in proposed s. 440.947 are intended to incorporate the provisions of the Federal Trade Commission (FTC) regulations that are described in the FTC's summary that you provided to me.

Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0832/P2dn  
MDK:cmh:jf

April 22, 1999

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