

P2

D-NOTE

Tomorrow
5/2
by noon

PM
has been
sent

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAJ

Reopen cost

cremation and
funeral

1 AN ACT *to renumber and amend* 445.105 (1) and 445.105 (2); *to consolidate,*
 2 *renumber and amend* 445.15 (1) and (1m); *to amend* 30.67 (6) (b), 157.067
 3 (1), 445.01 (6) and 445.04 (1); and *to create* 445.01 (6g), 445.01 (6r), 445.01 (9),
 4 445.01 (10), 445.105 (1) (b), 445.105 (2) (a) and (b), 445.105 (2m) and 445.145
 5 of the statutes; **relating to:** regulating funeral establishments and crematory
 6 advertising 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 the draft.

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4 withdrawn from the body of the decedent within 12 hours after his or her death, by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
9 coming under the scope of this section. The blood so drawn shall be forwarded to a
10 laboratory approved by the state health officer for analysis of the alcoholic content
11 of the blood specimen. The coroner or medical examiner causing the blood to be
12 withdrawn shall be notified of the results of each analysis made and shall forward
13 the results of each analysis to the state health officer. The state health officer shall
14 keep a record of all examinations to be used for statistical purposes only. The
15 cumulative results of the examinations, without identifying the individuals
16 involved, shall be disseminated and made public by the state health officer. The
17 department shall reimburse coroners and medical examiners for the costs incurred
18 in submitting reports and taking blood specimens and laboratories for the costs
19 incurred in analyzing blood specimens under this section.

****NOTE: The reference to "mortician" is deleted, which is otherwise not used in the statutes. (The only other reference is in s. 445.01 (5) (c), stats.)

20 SECTION 2. 157.067 (1) of the statutes is amended to read:

21 157.067 (1) In this section, "funeral establishment" has the meaning given in
22 s. 445.01 (6), except that "funeral establishment" does not include a building or part
23 of a building that is erected under s. 157.11 (1) for holding or conducting funeral

1 services if dead human bodies are not embalmed, cared for, or prepared for burial or
2 transportation, in the building.

***NOTE: The above change is necessary based on the amendment of s. 445.01 (6) below.

3 **SECTION 3.** 445.01 (6) of the statutes is amended to read:

4 445.01 (6) “Funeral establishment” means any building or part of a building
5 used and held out to the public as being used in the care and preparation for burial
6 or transportation of dead human bodies or for holding or conducting of funeral
7 services. “Funeral establishment” does not include a building or part of a building
8 that is erected under s. 157.11 (1) for holding or conducting funeral services if dead
9 human bodies are not cared for or prepared for burial or transportation in the
10 building. A funeral establishment must contain a preparation room equipped with
11 tile, cement or composition floor, necessary drainage and ventilation and contain
12 necessary instruments and supplies for the preparation and embalming of dead
13 human bodies for burial, transportation or other disposition as a preparation center,
14 memorial center, or both.

***NOTE: The deleted requirements regarding a preparation room are included below in proposed s. 445.105 (2) (intro.), which refers to a “preparation center.”

***NOTE: The deleted exemption for buildings erected under s. 157.11 (1) is included below in proposed s. 445.105 (1) (a).

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

16 445.01 (6g) “Funeral services” means ceremonies held in conjunction with the
17 disposition of the dead, including visitation, religious rites, memorials, and
18 graveside services, whether or not a dead human body is present during the
19 ceremonies.

***NOTE: I am assuming that the above definition does not include embalming. However, if embalming could be considered as part of a religious ceremony, you may want to address this issue.

1 SECTION 5. 445.01 (6r) of the statutes is created to read:

2 445.01 (6r) "Memorial center" means any building or part of a building used
3 and held out to the public as being used for holding or conducting funeral services.

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

5 445.01 (9) "Preparation center" means any building or part of a building used
6 and held out to the public as being used for embalming, caring for, or preparing for
7 burial or transportation dead human bodies.

8 SECTION 7. 445.01 (10) of the statutes is created to read:

9 445.01 (10) "Religious organization" means a church, synagogue, or mosque,
10 or any organization, whether or not organized under ch. 187, that operates under a
11 creed. ✓

~~****NOTE: The above language is borrowed from s. 341.14 (6r) (fm) I r., stats.~~

12 SECTION 8. 445.04 (1) of the statutes is amended to read:

13 445.04 (1) The business of a funeral director must be conducted in a funeral
14 establishment equipped for the care and preparation for burial or transportation of
15 dead human bodies. What shall be deemed "necessary equipment" shall be defined
16 in the rules that, except as provided in s. 445.105 (2), has a preparation center.

~~****NOTE: The deleted requirement regarding necessary equipment is included below in proposed s. 445.105 (2m) (c).~~

17 SECTION 9. 445.105 (1) of the statutes is renumbered 445.105 (1) (intro.) and
18 amended to read:

19 445.105 (1) (intro.) No person shall ~~may~~ conduct, maintain, manage, or operate
20 a funeral establishment unless a permit for each such funeral establishment has
21 been issued by the examining board and is conspicuously displayed in each such
22 funeral establishment. ~~In case of funeral, except that no permit is required for any~~
23 of the following:

INSERT 4-16

1 (a) Funeral services conducted or held in any building or part of a building that
2 is erected under s. 157.11 (1), private residence, church, or lodge hall, no permit shall
3 be required if dead human bodies are not embalmed, cared for, or prepared for burial
4 or transportation, in the building, private residence, or lodge hall.

5 **SECTION 10.** 445.105 (1) (b) of the statutes is created to read:

6 445.105 (1) (b) Funeral services conducted or held by a religious organization.

 ****NOTE: I assume you don't want to interfere with religious practices. Is the above
exception okay?

7 **SECTION 11.** 445.105 (2) of the statutes is renumbered 445.105 (2) (intro.) and
8 amended to read:

9 445.105 (2) (intro.) ~~No~~ The examining board may not issue a permit to operate
10 a funeral establishment shall be issued by the examining board unless each such the
11 requirements under sub. (2m) are satisfied and, except as follows, the funeral
12 establishment has a preparation center and has in charge, full time therein, a
13 licensed funeral director.;

14 **SECTION 12.** 445.105 (2) (a) and (b) of the statutes are created to read:

15 445.105 (2) (a) A licensed funeral director may be in charge of no more than 3
16 funeral establishments. A licensed funeral director may not be in charge of one or
17 more funeral establishments unless at least one of the funeral establishments has
18 a preparation center and no embalming takes place in a funeral establishment
19 without a preparation center.

20 (b) The operator of multiple funeral establishments may operate any of the
21 funeral establishments without a preparation center if at least one of the funeral
22 establishments has a preparation center and no embalming takes place in a funeral
23 establishment without a preparation center.

1 SECTION 13. 445.105 (2m) of the statutes is created to read:

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

4 (a) The operator of the funeral establishment is not ~~a religious organization or~~
5 an operator of a medical care institution, as defined in s. 610.70 (1) (e).

INSERT
6-5

****NOTE: "Medical care institution" is broadly defined in s. 610.70 (1) (e), stats., as "a facility, as defined in s. 647.01 (4), or any hospital, nursing home, community-based residential facility, county home, county infirmary, county hospital, county mental health center, adult family home, assisted living facility, rural medical center, hospice or other place licensed, certified or approved by the department of health and family services under s. 49.70, 49.71, 49.72, 50.02, 50.03, 50.032, 50.033, 50.034, 50.35, 50.52, 50.90, 51.04, 51.08 or 51.09 or a facility under s. 45.365, 51.05, 51.06 or 252.10 or under ch. 233 or licensed or certified by a county department under s. 50.032 or 50.033." Do you want to exclude any of these facilities from the prohibition?

6 (b) If the funeral establishment has a memorial center, the memorial center has
7 a seating capacity of 75 or more persons.

8 (c) If the funeral establishment has a preparation center, the preparation
9 center is equipped with a tile, cement, or composition floor, has necessary drainage
10 and ventilation, and contains necessary equipment, instruments, and supplies for
11 the preparation and embalming of dead human bodies for burial, transportation, or
12 other disposition. The examining board shall promulgate rules specifying the
13 equipment, instruments, and supplies that are necessary for purposes of this
14 paragraph.

****NOTE: The above incorporates the requirements regarding a preparation room that are deleted by the bill from the definition of "funeral establishment" under current law.

15 (d) The building or structure in which the funeral establishment is located
16 contains no more than one other ~~business~~ that does not operate a funeral
17 establishment. *business*

18 (e) The building or structure in which the funeral establishment is located is
19 affixed to real property.

INSERT 6-19

INSERT 7-6

Printed

INSERT

7-2

1 SECTION 14. 445.145 of the statutes is created to read:

2 **445.145 Advertising.** The operator of a crematory, or a funeral establishment
3 for which a permit is required under s. 445.105 (1), shall include the name and
4 address of the crematory or funeral establishment in any advertisement for the
5 crematory or funeral establishment by newspaper, periodical, telephone book listing,
6 or direct mail.

****NOTE: What about advertisements by outdoor signs, radio, or television? Also, should direct mail include electronic mail solicitations?

7 SECTION 15. 445.15 (1) and (1m) of the statutes are consolidated, renumbered
8 445:15 (1) and amended to read:

9 445.15 (1) ~~Except as provided in sub. (1m), any~~ Any person violating any
10 provision of this chapter or any rule of the department of health and family services
11 and the examining board relating to its subject matter, shall be fined not less than
12 \$50 ~~nor more than \$200, or \$5,000,~~ imprisoned not less than 30 days nor more than
13 3 months. ~~(1m) A funeral director or operator of a funeral establishment who~~
14 ~~violates s. 445.12 (3r) shall be fined not more than \$5,000 for each violation, or both.~~
15 Each day that an insurance intermediary authorized by a funeral director or
16 operator of a funeral establishment fails to meet the training requirements
17 established by the examining board by rule under s. 445.125 (3m) (j) 1. a. constitutes
18 a separate violation of s. 445.12 (3r) (b).

19 **SECTION 16. Initial applicability.**

and

(1) and

20 (1) FUNERAL ESTABLISHMENT PERMITS. The treatment of sections 445.01 (6), (6g),
21 (6r), (9), ~~and (10)~~, 445.04 (1), and 445.105 (2m) of the statutes, the renumbering and
22 amendment of section 445.105 ~~and~~ (2) of the statutes, and the creation of section

1 445.105 (1) (b) and (2) (a) and (b) of the statutes first apply to permits issued on the
2 effective date of this subsection.

****NOTE: Because the bill's effective date is delayed by about 6 months (see below), and because funeral establishment permits must be renewed by June 1, 2003, the new permitting requirements will first apply to permits that must be renewed by June 1, 2005. Is that okay?

3 (2) ADVERTISEMENTS. The treatment of section 445.145 of the statutes first
4 applies to advertisements that are subject to contracts entered into, modified, or
5 extended on the effective date of this subsection.

****NOTE: The above is necessary to address an impairment of contracts issue. For example, a person might enter into a contract before the bill's effective date for a listing in a telephone book that is published after the bill's effective date. Under the above provision, the bill does not apply to such a telephone listing.

6 (3) VIOLATIONS. The treatment of section 445.15 (1) ~~and (2)~~ of the statutes first
7 applies to violations occurring on the effective date of this subsection.

8 **SECTION 17. Effective date.**

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

****NOTE: The delayed effective date is about 6 months after the publication date. Some delay is probably necessary to give people time to comply with the bill's new requirements. Is 6 months okay?

11 (END)

INSERT 4-16:

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

2
3 445.105 (1) No person shall may conduct, maintain, manage, or operate a any
4 funeral establishment unless the examining board has issued the person a permit
5 for each such funeral establishment has been issued by the examining board and the
6 permit is conspicuously displayed in such each funeral establishment. ~~In case of,~~
7 except that a permit is not required for funeral services held in any building or part
8 of a building that is erected under s. 157.11 (1), private residence, church, or lodge
9 hall, no permit shall be required if dead human bodies are not embalmed, cared for,
10 or prepared for burial or transportation, in the building, residence, church, or lodge
11 hall. ✓

12 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.

INSERT 6-5:

13 , or a church, synagogue, or mosque, or any organization, whether or not organized
14 under ch. 187, that operates under a creed ✓

INSERT 6-19:

15 SECTION 2. 445.105 (3) of the statutes is amended to read:

16 445.105 (3) Applications for funeral establishment permits shall be made on
17 forms provided by the department and filed with the department and shall be
18 accompanied by the fee specified under s. 440.05 (1). The examining board shall
19 assign an identification number to each funeral establishment permit that is issued. ✓
20 The renewal date and renewal fee for a funeral establishment permit are specified
21 under s. 440.08 (2) (a). ✓

22 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.

INSERT 7-2:

1 A person may not, in any advertisement by newspaper, periodical, Internet web page,
 2 telephone book listing, direct mail, or electronic mail solicitation, represent that the
 3 person conducts the business of a funeral director or provides any funeral or
 4 cremation service, unless the advertisement includes the address of one funeral
 5 establishment or place of business at which the person conducts such business or
 6 provides such services. If the advertisement includes the address of a funeral
 7 establishment for which a permit is required under ~~§~~, the advertisement shall also
 8 include the identification number assigned by the examining board for the permit.

INSERT 7-6:

SECTION 3. 445.15 (1) of the statutes is amended to read:

11 445.15 (1) Except as provided in sub. (1m), any person violating any provision
 12 of this chapter or any rule of the department of health and family services and the
 13 examining board relating to its subject matter, shall be fined not less than \$50 nor
 14 more than \$200, or \$5,000, imprisoned not less than 30 days nor more than 3 months,
 15 or both.

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.

S. 445.105 (1)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1361/P2dn

MDK:/:....

g's

Representative Foti:

This version is identical to the previous version, except for the following:

1. This version does not eliminate the exemption from permitting requirements for a church under s. 445.105 (1), stats. However, note that the exemption applies only if embalming or other preparation activities do not take place in the church. ✓
2. Proposed s. 445.105 (2m) (d) refers to a "business" rather than an "occupant". ✓
3. The civil forfeiture under s. 445.15 (1), stats., is increased to ~~no~~^{not} more than \$5,000 and is kept separate from the penalties under s. 445.15 (1m), stats. ✓
4. Section 445.105 (3), stats., is amended to require identification numbers for each funeral establishment permit. This requirement may not be necessary if DRL or the board already assigns permit numbers. Also, if permit numbers are not currently assigned, the draft may have to be revised to require DRL or the board to issue numbers to current permit holders. Let me know what you think.
5. Permit numbers are required to be included in print advertisements under proposed s. 445.145, which is revised in this version. Also, the advertisement requirements are revised to apply to Internet web pages. ✓

Also note the following: ✓

1. Under this version (as under the previous version), embalming may be performed only in the preparation center of a funeral establishment that is issued a permit, except for any embalming that qualifies for the exemptions under s. 445.16 , stats. (religious practices, public institutions, medical colleges, etc.). This result is achieved because the business of a funeral director, which includes embalming, must be conducted in a permitted funeral establishment that, unless an exception applies, has a preparation center. See the amendment of s. 445.04 (1), stats. ✓ The exceptions specify that embalming cannot take place in a funeral establishment that does not have a preparation center. See proposed s. 445.105 (2) (a) ✓ and (b). ✓ Also, private residences, churches, lodge halls, and buildings erected under s. 157.11 (1), stats., which do not need a permit, may not embalm or otherwise care for dead bodies. See the proposed amendment of s. 445.105 (1), stats. ✓

2. As drafted, if ^{e two} 2 different people operate the same funeral establishment (for example, by sharing embalming facilities), each person needs a permit for that establishment. See the proposed amendment of s. 445.105 (1), stats. Although the bill doesn't specify that more than one permit may be issued for a single funeral establishment, I think that result is achieved because no person may operate a funeral establishment unless the board has issued a permit to that person. If this result is not consistent with your intent, please let me know.
3. The bill does not make any substantive changes to the prohibition against funeral establishments in cemeteries under s. 157.067, stats. The bill's amendment of s. 157.065 (1), stats., does not change current law. ✓
4. Like the previous version, the bill's requirements first apply to permits issued on the effective date of the bill and, therefore, do not apply to current permit holders. ✓

✓

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1361/P2dn
MDK:cjs:pg

May 2, 2003

Representative Foti:

This version is identical to the previous version, except for the following:

1. This version does not eliminate the exemption from permitting requirements for a church under s. 445.105 (1), stats. However, note that the exemption applies only if embalming or other preparation activities do not take place in the church.
2. Proposed s. 445.105 (2m) (d) refers to a "business" rather than an "occupant".
3. The fine under s. 445.15 (1), stats., is increased to not more than \$5,000 and is kept separate from the penalties under s. 445.15 (1m), stats.
4. Section 445.105 (3), stats., is amended to require identification numbers for each funeral establishment permit. This requirement may not be necessary if DRL or the board already assigns permit numbers. Also, if permit numbers are not currently assigned, the draft may have to be revised to require DRL or the board to issue numbers to current permit holders. Let me know what you think.
5. Permit numbers are required to be included in print advertisements under proposed s. 445.145, which is revised in this version. Also, the advertisement requirements are revised to apply to Internet web pages.

Also note the following:

1. Under this version (as under the previous version), embalming may be performed only in the preparation center of a funeral establishment that is issued a permit, except for any embalming that qualifies for the exemptions under s. 445.16 , stats. (religious practices, public institutions, medical colleges, etc.). This result is achieved because the business of a funeral director, which includes embalming, must be conducted in a permitted funeral establishment that, unless an exception applies, has a preparation center. See the amendment of s. 445.04 (1), stats. The exceptions specify that embalming cannot take place in a funeral establishment that does not have a preparation center. See proposed s. 445.105 (2) (a) and (b). Also, private residences, churches, lodge halls, and buildings erected under s. 157.11 (1), stats., which do not need a permit, may not embalm or otherwise care for dead bodies. See the proposed amendment of s. 445.105 (1), stats.

2. As drafted, if two different people operate the same funeral establishment (for example, by sharing embalming facilities), each person needs a permit for that establishment. See the proposed amendment of s. 445.105 (1), stats. Although the bill doesn't specify that more than one permit may be issued for a single funeral establishment, I think that result is achieved because no person may operate a funeral establishment unless the board has issued a permit to that person. If this result is not consistent with your intent, please let me know.
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Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

Memo

To: LRB-1361 Drafting File
From: Mark Kunkel
Date: July 29, 2003
Re: Meeting on July 22

At the above meeting at Pat Essie's office (also attending: Tom Hanson, Tom Jackson from Sen. Schultz's office, Erin Longmire and various funeral directors), I received instructions for a new request for Sen. Schultz that makes the following changes to LRB-1361/P2:

1. Change the requester to Sen. Schultz:
2. Add "funeral arrangements" to the definition of the activities of a funeral director. Use the same definition as in the Admin. Code. However, create an exception to a funeral director's license for insurance agents who are allowed to sell pre-need policies.

One of the concerns is to make sure that persons who work in hospices or other medical settings cannot make funeral arrangements unless they are licensed funeral directors.

Include an exception for family members and guardians?

3. Revise "strip mall" prohibition to refer to businesses that do not provide goods or services related to funerals. (See p. 5, lines 23-25.)
4. Page 5, line 15: change seating capacity to 50.
5. Strike sentence on page 6, lines 17-19.

After the meeting, I spoke with Erin, who added that the bill should be revised to make sure that only funeral directors can do funeral arrangements (with the exception for insurance agents), but that funeral directors should be allowed to do them anywhere. In other words, revise the requirement under current law that the entire business of a funeral director must take place in a funeral establishment.

MEMORANDUM

TO: Funeral Directors Examining
FROM: Jacquelynn B. Rothstein
SUBJECT: Question Concerning "Memorial Centers"
DATE: February 23, 2003

The Wisconsin Funeral Directors Association (WFDA) posed several questions concerning the rise in facilities known as "memorial centers." According to the WFDA, many of these facilities were previously licensed as funeral establishments but have since removed the preparation rooms from them as well as the term "funeral home" from their signs, advertisements, and stationary. As a result, these facilities are now known as memorial centers in which funerals/visitations are held, and where preneed and at-need arrangements are made. Given this background, the WFDA wondered whether these so-called memorial centers are effectively funeral establishments as defined by s. 445.01 (6), Wis. Stats., and therefore subject to licensure.

Wisconsin Statutes s. 445.04 (1) states, in relevant part, that "[t]he business of a funeral director must be conducted in a funeral establishment equipped for the care and preparation for burial or transportation of dead human bodies." Additionally, Wis. Stats. s. 445.01 (6) defines a funeral establishment as "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 funeral services." A funeral establishment must also contain a preparation room. The term "funeral services" is further defined in s. FD 2.02, Wis. Admin. Code, to mean "the ceremonies held in conjunction with disposition of the dead, including visitation, religious rites, memorials and gravesite services." Under s. FD 2.03, Wis. Admin. Code, funeral arrangements may be made only by licensed funeral directors. Funeral arrangements are defined in s. FD 2.02 (1), Wis. Admin. Code, to mean the provision of information or advice on selection and cost of merchandise, facilities, equipment or personal services provided for final disposition of a dead human body in the course of formulating a contractual agreement between a funeral director or funeral home and client (notwithstanding the exception provided for "agents" as found in 445.125, Wis. Stats. and FD 6, Wis. Admin. Code).

A strict construction of these provisions suggests that the business of a funeral director should be conducted solely within the confines of a funeral establishment, the definition of which is clearly set forth in both the statutes and administrative rules. However, in an apparent attempt to skirt those provisions, it appears as if a hybrid facility, otherwise known as a "memorial center," has been developed.

Legislation was drafted within the recent past to attempt to address this matter. In essence, the proposed legislation would have provided for two types of establishment permits. One permit (Class A) would have required that a funeral establishment have an embalming room, with a full time funeral director in charge. The second permit (Class B) would have only permitted the establishment to hold or conduct funerals; however, a "Class A" funeral establishment would have to exist first before a person could apply for a Class B permit. Moreover, private individuals who are not operators of Class A funeral establishments would be ineligible to obtain Class B permits. This proposal was never enacted.

Arguably, then, funeral directors are only permitted to engage in funeral directing within a licensed establishment, rather than in a "memorial center." If the WFDA has reason to believe that there are "memorial centers" operating outside the scope of the law, I would recommend that it file a complaint so that the matter can be further investigated.

Kunkel, Mark

From: Tom Hanson [thanson@chartermi.net]
Sent: Friday, July 25, 2003 10:05 AM
To: Kunkel, Mark
Cc: Mark Paget
Subject: Re: Funeral draft delay

Thanks Mark! Since our meeting concern has been raised about allowing a funeral director to make arrangements at a church or similar place at the request of the family. Could you add some language like--At the request of a client, a funeral establishment may send a licensed funeral director to make funeral arrangements at a location other than the funeral home--- Senator Schultz may also call about this. Tom Hanson

----- Original Message -----

From: "Kunkel, Mark" <Mark.Kunkel@legis.state.wi.us>
To: <elongmire@patrickessie.com>; <pessie@patrickessie.com>; <thanson@chartermi.net>
Sent: Thursday, July 24, 2003 3:27 PM
Subject: Funeral draft delay

> Pat, Erin and Tom:

>
> We are shorthanded on editors this week due to summer vacations.
Therefore,
> the funeral director revision won't be done until Monday or Tuesday of
next
> week. I'll email it as soon as it is ready.

>
>

> Mark D. Kunkel
> Senior Legislative Attorney
> Legislative Reference Bureau
> (608) 266-0131

>
>

①

SA ✓

NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

RM NOT RUN

FRIDAY 8/1
1:30pm

insert B

Page cut

directors and

1 AN ACT *to renumber and amend* 445.105 (2); *to amend* 30.67 (6) (b), 157.067
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SECTION 1. 30.67 (6) (b) of the statutes is amended to read:

INSERT 1A

put a little extra space between the insert and the TAGS.
6

1 30.67 (6) (b) In cases of death involving a boat in which the person died within
 2 6 hours of the time of the accident, a blood specimen of at least 10 cc. shall be
 3 withdrawn from the body of the decedent within 12 hours after his or her death, by
 4 the coroner or medical examiner or by a physician so designated by the coroner or
 5 medical examiner or by a qualified person at the direction of the physician. All
 6 morticians funeral directors, as defined in s. 445.01 (5), shall obtain a release from
 7 the coroner or medical examiner prior to proceeding with embalming any body
 8 coming under the scope of this section. The blood so drawn shall be forwarded to a
 9 laboratory approved by the state health officer for analysis of the alcoholic content
 10 of the blood specimen. The coroner or medical examiner causing the blood to be
 11 withdrawn shall be notified of the results of each analysis made and shall forward
 12 the results of each analysis to the state health officer. The state health officer shall
 13 keep a record of all examinations to be used for statistical purposes only. The
 14 cumulative results of the examinations, without identifying the individuals
 15 involved, shall be disseminated and made public by the state health officer. The
 16 department shall reimburse coroners and medical examiners for the costs incurred
 17 in submitting reports and taking blood specimens and laboratories for the costs
 18 incurred in analyzing blood specimens under this section.

INS X

19 SECTION 2. 157.067 (1) of the statutes is amended to read:

20 157.067 (1) In this section, "funeral establishment" has the meaning given in
 21 s. 445.01 (6), except that "funeral establishment" does not include a building or part
 22 of a building that is erected under s. 157.11 (1) for holding or conducting funeral
 23 services if dead human bodies are not embalmed, cared for, or prepared for burial or
 24 transportation, in the building.

25 SECTION 3. 445.01 (6) of the statutes is amended to read:

INS Y

INSERT 2-24 ✓

1 445.01 (6) "Funeral establishment" means any building or part of a building
2 used and held out to the public as being used ~~in the care and preparation for burial~~
3 ~~or transportation of dead human bodies or for holding or conducting of funeral~~
4 ~~services. "Funeral establishment" does not include a building or part of a building~~
5 ~~that is erected under s. 157.11 (1) for holding or conducting funeral services if dead~~
6 ~~human bodies are not cared for or prepared for burial or transportation in the~~
7 ~~building. A funeral establishment must contain a preparation room equipped with~~
8 ~~tile, cement or composition floor, necessary drainage and ventilation and contain~~
9 ~~necessary instruments and supplies for the preparation and embalming of dead~~
10 ~~human bodies for burial, transportation or other disposition as a preparation center,~~
11 memorial center, or both.

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

13 445.01 (6g) "Funeral services" means ceremonies held in conjunction with the
14 disposition of the dead, including visitation, religious rites, memorials, and
15 graveside services, whether or not a dead human body is present during the
16 ceremonies.

17 SECTION 5. 445.01 (6r) of the statutes is created to read:

18 445.01 (6r) "Memorial center" means any building or part of a building used
19 and held out to the public as being used for holding or conducting funeral services.

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

21 445.01 (9) "Preparation center" means any building or part of a building used
22 and held out to the public as being used for embalming, caring for, or preparing for
23 burial or transportation dead human bodies.

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

INSERT 4-1

1 445.04 (1) ~~The~~ business of a funeral director must be conducted in a funeral
2 establishment equipped for the care and preparation for burial or transportation of
3 dead human bodies. What shall be deemed "necessary equipment" shall be defined
4 in the rules that, except as provided in s. 445.105 (2), has a preparation center.

5 **SECTION 8.** 445.105 (1) of the statutes is amended to read:

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

15 **SECTION 9.** 445.105 (2) of the statutes is renumbered 445.105 (2) (intro.) and
16 amended to read:

17 445.105 (2) (intro.) No The examining board may not issue a permit to operate
18 a funeral establishment shall be issued by the examining board unless each such the
19 requirements under sub. (2m) are satisfied and, except as follows, the funeral
20 establishment has a preparation center and has in charge, full time therein, a
21 licensed funeral director.:

22 **SECTION 10.** 445.105 (2) (a) and (b) of the statutes are created to read:

23 445.105 (2) (a) A licensed funeral director may be in charge of no more than 3
24 funeral establishments. A licensed funeral director may not be in charge of one or
25 more funeral establishments unless at least one of the funeral establishments has

1 a preparation center and no embalming takes place in a funeral establishment
2 without a preparation center.

3 (b) The operator of multiple funeral establishments may operate any of the
4 funeral establishments without a preparation center if at least one of the funeral
5 establishments has a preparation center and no embalming takes place in a funeral
6 establishment without a preparation center.

7 SECTION 11. 445.105 (2m) of the statutes is created to read:

8 445.105 (2m) The examining board may not issue a permit to operate a funeral
9 establishment unless all of the following are satisfied:

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

14 (b) If the funeral establishment has a memorial center, the memorial center has
15 a seating capacity of *50* or more persons. ✓

16 (c) If the funeral establishment has a preparation center, the preparation
17 center is equipped with a tile, cement, or composition floor, has necessary drainage
18 and ventilation, and contains necessary equipment, instruments, and supplies for
19 the preparation and embalming of dead human bodies for burial, transportation, or
20 other disposition. The examining board shall promulgate rules specifying the
21 equipment, instruments, and supplies that are necessary for purposes of this
22 paragraph.

23 (d) The building or structure in which the funeral establishment is located
24 contains no more than one other business that does not ~~operate a funeral~~

25 ~~establishment.~~ *provide goods or services related to funerals, burials, or the final disposition of human remains*

1 (e) The building or structure in which the funeral establishment is located is
2 affixed to real property.

3 SECTION 12. ~~445.105 (3)~~ of the statutes is amended to read:

4 445.105 (3) Applications for funeral establishment permits shall be made on
5 forms provided by the department and filed with the department and shall be
6 accompanied by the fee specified under s. 440.05 (1). The examining board shall
7 assign an identification number to each funeral establishment permit that is issued.
8 The renewal date and renewal fee for a funeral establishment permit are specified
9 under s. 440.08 (2) (a).

10 SECTION 13. 445.145 of the statutes is created to read:

11 **445.145 Printed advertising.** A person may not, in any advertisement by
12 newspaper, periodical, Internet web page, telephone book listing, direct mail, or
13 electronic mail solicitation, represent that the person conducts the business of a
14 funeral director or provides any funeral or cremation service, unless the
15 advertisement includes the address of one funeral establishment or place of business
16 at which the person conducts such business or provides such services. If the

17 advertisement includes the address of a funeral establishment for which a permit is
18 required under s. 445.105 (1), the advertisement shall also include the identification
19 number assigned by the examining board for the permit.

20 SECTION 14. 445.15 (1) of the statutes is amended to read:

21 445.15 (1) Except as provided in sub. (1m), any person violating any provision
22 of this chapter or any rule of the department of health and family services and the
23 examining board relating to its subject matter, shall be fined not less than \$50 nor
24 more than \$200, or \$5,000, imprisoned not less than 30 days nor more than 3 months,
25 or both.

INSERT 6-25

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INSERT 1A:

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

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← **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 the care and preparation for burial or transportation of dead human bodies, or for holding or conducting funeral services. 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. Also under current law, a funeral establishment must have a preparation room for preparing and embalming dead human bodies.

This bill defines "funeral establishment" to have a meaning similar to the meaning under current law, but creates new terminology. Under the bill, a "funeral establishment" is defined as a "preparation center", "memorial center", or both. "Preparation center" is defined as a building or part of a building that is used for embalming, caring for, or preparing for the burial or transportation of dead human bodies. "Memorial center" is defined as a building or part of a building used for holding or conducting "funeral services" which are defined as ceremonies held in conjunction with the disposition of the dead, whether or not a dead human body is present during the ceremonies.

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The bill changes the permitting requirements for funeral establishments. The bill allows a licensed funeral director to be in charge of up to ^{three} 3 different funeral establishments. Such funeral establishments are eligible for permits even though the funeral director is not in full-time charge of a single funeral establishment. However, at least one of the funeral establishments must have preparation center and no embalming may take place at a funeral establishment that does not have a preparation center.

The bill also creates the following new requirements that a funeral establishment must satisfy in order to receive a permit: 1) the operator of the funeral establishment may not be a medical care institution, church, synagogue, mosque, or religious organization; 2) any memorial center must have a seating capacity of 50 or more persons; 3) the building or structure in which the funeral establishment is located must contain ^{not} no more than one other business that does not provide goods or services related to funerals, burials, or the final disposition of human remains; and 4) such building or structure must be affixed to real property. Also under the bill, a funeral establishment is not required to have a preparation center. However, if a funeral establishment has a preparation center, it must satisfy the requirements under current law that apply to a preparation room.

not

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 merchandise, facilities, equipment, or personal 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 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 outside a funeral establishment. However, as under current law, any other business of a funeral director must be conducted in a funeral establishment.

In addition, the bill provides that a person who violates state law regulating funeral establishments or directors may be subject to a fine of no more than \$5,000, imprisonment for between 30 days and 3 months, or both. Under current law, the potential fine is limited to between \$50 and \$200.

Finally, 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.

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Printed advertising *conducts the business of a funeral director or*

The bill prohibits a person from making an advertisement representing that the person 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.

1

INSERT 2-24:

^

2

SECTION 1. 445.01 (2m) of the statutes is created to read:

3

445.01 (2m) "Compensation" means direct or indirect payment, including the

4

expectation of payment whether or not actually received.

5

SECTION 2. 445.01 (~~2m~~) of the statutes is created to read:

4m

the *4m(B)*

1 445.01 (8m) "Funeral arrangements" means the provision of information or
2 advice on selection and cost of merchandise, facilities, equipment, or personal
3 services provided for the final disposition of a dead human body.

4 SECTION 3. 445.01 (5) (a) of the statutes is renumbered 445.01 (5) (a) (intro.)
5 and amended to read:

6 445.01 (5) (a) (intro.) A person engaged in or conducting, or holding himself or
7 herself out, in whole or in part, as being engaged in ~~embalming~~ any of the following:

8 1. Embalming or otherwise preparing for the burial or disposal, ~~or directing of~~ ✓
9 dead human bodies.

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

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.

11 SECTION 4. 445.01 (5) (a) 3. of the statutes is created to read:

12 445.01 (5) (a) 3. For compensation, making funeral arrangements, including
13 any funeral arrangements that are incidentally made in the conduct of the profession
14 or occupation in which the person is primarily employed. ✓

15 INSERT 4-1:

16 Except for making funeral arrangements, the

17 INSERT 6-25:

18 SECTION 5. 445.16 of the statutes is renumbered 445.16 (1). ✓

19 SECTION 6. 445.16 [^](2) of the statutes is created to read: ✓

20 445.16 (2) This chapter does not require an insurance intermediary licensed
21 under ch. 628 to be licensed as a funeral director to sell or solicit the sale of a burial
22 agreement, as defined in s. 445.125 (3m) (a) 2., that is funded with the proceeds of ✓
23 a life insurance policy.

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

~~LRB-1361/ins CJS~~
LRB
.....
LRB-1361/ins CJS

INS X

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

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

(1)

History: 1985 a. 315; 1985 a. 332 s. 253; 1989 a. 307; 1993 a. 386; 1995 a. 357; 1997 a. 114; 2001 a. 16.

SECTION 2. 252.15 (5) (a) 7. of the statutes is amended to read:

(a) 1. or 2.
or (c)

INSY

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

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1361/1dn

MDK:/:....

gs

*Subject to
the licensure
requirement*

*who make
such arrangements*

Senator Schultz:

This bill makes the following changes to the previous version:

1. "Funeral director" is defined to include a person who makes "funeral arrangements" which is defined based on the Wis. Admin. Code. Note, however, I deleted the Code's reference to formulating a contractual agreement between a funeral director or funeral home and client because I think that this reference limits the definition too much for your purposes. Also note that the bill specifies that a funeral director is a person who makes such arrangements, even if the arrangements are made incidentally in the conduct of the person's primary profession or occupation. I included this language to make sure that persons such as hospice workers are covered under the definition, which I think is consistent with your intent. In addition, the definition provides that the arrangements must be made for compensation. The intent here is to make sure that family or friends who offer gratuitous advice are not covered.
2. The bill allows a funeral director to make funeral arrangements outside a funeral establishment. ✓
3. The seating requirement for a memorial center is changed to 50. ✓
4. I added a definition of "creed" for purposes of proposed s. 445.105 (2m) (a). The definition is "creed" means a "system of religious beliefs, including moral or ethical beliefs about right and wrong, that are sincerely held with the strength of traditional religious views." ✓
5. The "strip mall" provision regarding funeral establishments is revised. See proposed s. 445.105 (2m) (d). ✓
6. Proposed s. 445.145 (printed advertising) is revised to eliminate the requirement for a permit number. Note that I also eliminated the proposed amendment of s. 445.105 (3) from the previous version, which also deals with permit numbers. ✓
7. An exemption for insurance agents is created in proposed s. 445.16 (2). ✓

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1361/1dn
MDK:cjs:ch

July 31, 2003

Senator Schultz:

This bill makes the following changes to the previous version:

1. "Funeral director" is defined to include a person who makes "funeral arrangements," which is defined based on the Wis. Admin. Code. Note, however, I deleted the Code's reference to formulating a contractual agreement between a funeral director or funeral home and client because I think that this reference limits the definition too much for your purposes. Also, note that the bill specifies that a funeral director is a person who makes such arrangements, even if the arrangements are made incidentally in the conduct of the person's primary profession or occupation. I included this language to make sure that persons such as hospice workers who make such arrangements are subject to the licensure requirement, which I think is consistent with your intent. In addition, the definition provides that the arrangements must be made for compensation. The intent here is to make sure that family or friends who offer gratuitous advice are not covered.
2. The bill allows a funeral director to make funeral arrangements outside a funeral establishment.
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7. An exemption for insurance agents is created in proposed s. 445.16 (2).

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

D-NOTE

Tomorrow 8/12
noon

2003 BILL

stays
PM has been pun

SA✓

Repeal

1 AN ACT ~~to renumber~~ 445.16; *to renumber and amend* 445.01 (5) (a) and
2 445.105 (2); *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), 445.105 (1) and 445.15 (1); and *to create* 445.01 (2m),
4 445.01 (4m), 445.01 (5) (a) 3., 445.01 (6g), 445.01 (6r), 445.01 (9), 445.105 (2) (a)
5 and (b), 445.105 (2m), 445.145 and 445.16 (2) of the statutes; **relating to:**
6 regulating funeral directors and establishments, regulating cremation and
7 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 the care and preparation for burial or transportation of dead human bodies or for holding or conducting funeral services. 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

BILL

establishment. As a result, a funeral director may be in charge of only one funeral establishment. Also under current law, a funeral establishment must have a preparation room for preparing and embalming dead human bodies.

This bill defines "funeral establishment" to have a meaning similar to the meaning under current law, but creates new terminology. Under the bill, a "funeral establishment" is defined as a "preparation center," "memorial center," or both. "Preparation center" is defined as a building or part of a building that is used for embalming, caring for, or preparing for the burial or transportation of dead human bodies. "Memorial center" is defined as a building or part of a building that is used for holding or conducting "funeral services," which are defined as ceremonies held in conjunction with the disposition of the dead, whether or not a dead human body is present during the ceremonies.

The bill changes the permitting requirements for funeral establishments. The bill allows a licensed funeral director to be in charge of up to three different funeral establishments. Such funeral establishments are eligible for permits even though the funeral director is not in full-time charge of a single funeral establishment. However, at least one of the funeral establishments must have preparation center and no embalming may take place at a funeral establishment that does not have a preparation center.

The bill also creates the following new requirements that a funeral establishment must satisfy in order to receive a permit: 1) the operator of the funeral establishment may not be a medical care institution, church, synagogue, mosque, or religious organization; 2) any memorial center must have a seating capacity of 50 or more persons; 3) 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 4) such building or structure must be affixed to real property. Also under the bill, a funeral establishment is not required to have a preparation center. However, if a funeral establishment has a preparation center, it must satisfy the requirements under current law that apply to a preparation room.

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 merchandise, facilities, equipment, or personal 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 persons

BILL

or conduct funeral services (as defined in the bill)

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 outside a funeral establishment. However, as under current law, any other business of a funeral director must be conducted in a funeral establishment.

In addition, the bill provides that a person who violates state law regulating funeral establishments or directors may be subject to a fine of no more than \$5,000, imprisonment for between 30 days and 3 months, or both. Under current law, the potential fine is limited to between \$50 and \$200.

Finally, 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

BILL

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

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

14 69.18 (1) (a) 3. A person acting under s. 157.02 or 445.16 (1).

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

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

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

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

BILL

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

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

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

5 445.01 (4m) “Funeral arrangements” means the provision of information or
6 advice on the selection and cost of merchandise, facilities, equipment, or personal
7 services provided for the final disposition of a dead human body.

8 **SECTION 7.** 445.01 (5) (a) of the statutes is renumbered 445.01 (5) (a) (intro.)
9 and amended to read:

10 445.01 (5) (a) (intro.) A person engaged in or conducting, or holding himself or
11 herself out, in whole or in part, as being engaged in ~~embalming~~ any of the following:

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

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

15 **SECTION 8.** 445.01 (5) (a) 3. of the statutes is created to read:

16 445.01 (5) (a) 3. For compensation, making funeral arrangements, including
17 any funeral arrangements that are incidentally made in the conduct of the profession
18 or occupation in which the person is primarily employed.

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

20 445.01 (6) “Funeral establishment” means any building or part of a building
21 used and held out to the public as being used ~~in the care and preparation for burial~~
22 ~~or transportation of dead human bodies or for holding or conducting of funeral~~
23 ~~services.~~ “Funeral establishment” does not include a building or part of a building
24 ~~that is erected under s. 157.11 (1) for holding or conducting funeral services if dead~~
25 ~~human bodies are not cared for or prepared for burial or transportation in the~~

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1 ~~building. A funeral establishment must contain a preparation room equipped with~~
 2 ~~tile, cement or composition floor, necessary drainage and ventilation and contain~~
 3 ~~necessary instruments and supplies for the preparation and embalming of dead~~
 4 ~~human bodies for burial, transportation or other disposition as a preparation center,~~
 5 memorial center, or both.

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

7 445.01 (6g) "Funeral services" means ceremonies held in conjunction with the
 8 disposition of the dead, including visitation, religious rites, memorials, and
 9 graveside services, whether or not a dead human body is present during the
 10 ceremonies.

11 SECTION 11. 445.01 (6r) of the statutes is created to read:

12 445.01 (6r) "Memorial center" means any building or part of a building used
 13 and held out to the public as being used for holding or conducting funeral services.

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

15 445.01 (9) "Preparation center" means any building or part of a building used
 16 and held out to the public as being used for embalming, caring for, or preparing for
 17 burial or transportation dead human bodies.

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

19 445.04 (1) The Except for making funeral arrangements, the business of a
 20 funeral director must be conducted in a funeral establishment ~~equipped for the care~~
 21 ~~and preparation for burial or transportation of dead human bodies.~~ What shall be
 22 deemed "necessary equipment" shall be defined in the rules that, except as provided
 23 in s. 445.105 (2), has a preparation center.

*or conducting
 funeral services*

24 SECTION 14. 445.105 (1) of the statutes is amended to read:

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

10 **SECTION 15.** 445.105 (2) of the statutes is renumbered 445.105 (2) (intro.) and
11 amended to read:

12 445.105 (2) (intro.) ~~No~~ The examining board may not issue a permit to operate
13 a funeral establishment ~~shall be issued by the examining board unless each such~~ the
14 requirements under sub. (2m) are satisfied and, except as follows, the funeral
15 establishment has a preparation center and has in charge, full time therein, a
16 licensed funeral director.:

17 **SECTION 16.** 445.105 (2) (a) and (b) of the statutes are created to read:

18 445.105 (2) (a) A licensed funeral director may be in charge of no more than 3
19 funeral establishments. A licensed funeral director may not be in charge of one or
20 more funeral establishments unless at least one of the funeral establishments has
21 a preparation center and no embalming takes place in a funeral establishment
22 without a preparation center.

23 (b) The operator of multiple funeral establishments may operate any of the
24 funeral establishments without a preparation center if at least one of the funeral

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1 establishments has a preparation center and no embalming takes place in a funeral
2 establishment without a preparation center.

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

4 445.105 (2m) The examining board may not issue a permit to operate a funeral
5 establishment unless all of the following are satisfied:

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

10 (b) If the funeral establishment has a memorial center, the memorial center has
11 a seating capacity of 50 or more persons.

12 (c) If the funeral establishment has a preparation center, the preparation
13 center is equipped with a tile, cement, or composition floor, has necessary drainage
14 and ventilation, and contains necessary equipment, instruments, and supplies for
15 the preparation and embalming of dead human bodies for burial, transportation, or
16 other disposition. The examining board shall promulgate rules specifying the
17 equipment, instruments, and supplies that are necessary for purposes of this
18 paragraph.

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

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

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

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1 **445.145 Printed advertising.** A person may not, in any advertisement by
2 newspaper, periodical, Internet web page, telephone book listing, direct mail, or
3 electronic mail solicitation, represent that the person conducts the business of a
4 funeral director or provides any funeral or cremation service, unless the
5 advertisement includes the address of one funeral establishment or place of business
6 at which the person conducts such business or provides such services.

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

8 445.15 (1) Except as provided in sub. (1m), any person violating any provision
9 of this chapter or any rule of the department of health and family services and the
10 examining board relating to its subject matter, shall be fined not less than \$50 nor
11 more than \$200, or \$5,000, imprisoned not less than 30 days nor more than 3 months,
12 or both.

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

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

15 445.16 (2) This chapter does not require an insurance intermediary licensed
16 under ch. 628 to be licensed as a funeral director to sell or solicit the sale of a burial
17 agreement, as defined in s. 445.125 (3m) (a) 2., that is funded with the proceeds of
18 a life insurance policy.

19 **SECTION 22. Initial applicability.**

20 (1) FUNERAL ESTABLISHMENT PERMITS. The treatment of sections 445.01 (6), (6g),
21 (6r), and (9), 445.04 (1), and 445.105 (1) and (2m) of the statutes, the renumbering
22 and amendment of section 445.105 (2) of the statutes, and the creation of section
23 445.105 (2) (a) and (b) of the statutes first apply to permits issued on the effective date
24 of this subsection.

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

LRB-1361/2dn

MDK:/:....

cjs

Sen. Schultz:

This version is identical to the previous version, except that the proposed amendment of s. 445.04 (1) includes an exception for conducting funeral services.

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Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

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August 11, 2003

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Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us