

CHAPTER 445

FUNERAL DIRECTORS

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Cross-reference: See definitions in s. 440.01.

445.01 Definitions. As used in this chapter:

(2) “Apprentice” means a person engaged in the learning of the practice of funeral directing under the instruction and personal supervision of a funeral director who is licensed under this chapter and whose funeral establishment is located in this state.

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

(3) “Embalming” means disinfecting or preserving dead human bodies, entire or in part, by the use of chemical substances, fluids or gases in the body, or by the introduction of same into the body by vascular or hypodermic injection, or by direct application into the organs or cavities for the purpose of preservation or disinfection.

(4) “Examining board” means the funeral directors examining board.

(5) A “funeral director” means any of the following:

(a) A person engaged in or conducting, or holding himself or herself out, in whole or in part, as being engaged in any of the following:

1. Embalming or otherwise preparing for the burial or disposal of dead human bodies.
2. Directing and supervising the burial or disposal of dead human bodies.

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

(6) “Funeral establishment” means any building or part of a building used and held out to the public as being used for caring or preparing for the burial or transportation of dead human bodies or for holding or conducting of funeral services.

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

(8) “Person” includes firm, corporation, partnership, cooperative, unincorporated cooperative association, and association of individuals.

(9) “Preparation room” means any building or part of a building used for embalming, caring for, or preparing for burial or transportation 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; 2005 a. 266, 441; 2017 a. 304.

445.03 Powers of examining board. (1) The examining board shall:

- (a) Enforce this chapter.
- (b) Make and enforce rules necessary for the administration of subch. I of ch. 157.

(2) The examining board may:

(a) Make and enforce rules not inconsistent with this chapter establishing professional and business ethics for the profession of funeral directors and for the general conduct of the business of funeral directing, and for the examination and licensing of funeral directors and the registration of apprentices.

(b) Grant licenses to funeral directors, certificates of registration to apprentices, and permits to operators of funeral establishments.

(c) Conduct a school of instruction to apprise funeral directors of the most recent scientific knowledge and developments affecting their profession. Qualified lecturers and demonstrators shall be employed for this purpose, who may be selected without regard to the civil service law.

(d) Make and determine reciprocal agreements with other states.

History: 1971 c. 301; 1975 c. 39 ss. 650, 651, 732 (2); 1979 c. 175 s. 29; 1979 c. 221 s. 660; Stats. 1979 s. 445.03; 1981 c. 20, 162; 1983 a. 485; 1985 a. 316 s. 25.

Rules authorized under sub. (2) (a) should be enacted under ch. 227. 63 Atty. Gen. 154.

445.04 Funeral directors; licenses. (1) Except for conducting funeral services, the business of a funeral director must be conducted in a funeral establishment that has been issued a permit by the examining board.

(2) Except as provided in s. 257.03, no person may engage in the business of a funeral director, or make a representation as engaged in such business, in whole or in part, unless first licensed as a funeral director by the examining board. Application for a license, other than a renewal, shall be in writing and verified on a form to be furnished by the department. The application must specify the address at which the applicant proposes to conduct the business of a funeral director and shall contain such other information as the examining board requires to determine compliance with the requirements of this chapter. Accompanying the application shall be the initial credential fee determined by the department under s. 440.03 (9) (a), together with affidavits of recommendation from at least 2 persons of the county in which the applicant resides or proposes to conduct the business of a funeral director.

(3) (a) Written examinations for a funeral director’s license under pars. (b) and (c) shall be held at least once a year and shall be conducted by the examining board at a time and place to be designated by the examining board.

(b) The comprehensive examination shall include the subjects of:

1. Funeral directing and burial or other disposition of dead human bodies;
2. Anatomy, bacteriology, autopsy, chemistry and practical embalming; and
3. Sanitary science, public health, transportation, business ethics and the laws of this state and rules of the department of

health services relating to communicable diseases, quarantine and causes of death.

(c) The jurisprudence examination shall test the applicant's knowledge of state law relating to funeral directing.

History: 1971 c. 301; 1975 c. 39 ss. 653, 732 (2); 1975 c. 199; 1977 c. 29, 418; 1979 c. 175 s. 29; 1979 c. 221 s. 661; Stats. 1979 s. 445.04; 1981 c. 162, 380; 1983 a. 485; 1991 a. 39; 1995 a. 27 s. 9126 (19); 2005 a. 266; 2007 a. 20 ss. 3514, 9121 (6) (a); 2009 a. 42; 2017 a. 331.

Cross-reference: See also chs. DHS 135 and 136, Wis. adm. code.

445.045 License requirements. (1) To be eligible for an original funeral director's license, a person must meet all of the following requirements:

(a) The person must be at least 18 years of age.

(b) Subject to ss. 111.321, 111.322 and 111.335, the person must not have an arrest or conviction record.

(d) The person must have completed 24 semester credits of instruction in a recognized college or university, in a course of study approved by the examining board, or have equivalent education.

(e) The person must have satisfactorily completed 9 months or more of instruction in a prescribed course in mortuary science approved by the examining board.

(f) The person must have completed one year of apprenticeship as prescribed in s. 445.095, either before or after taking the course in mortuary science required by par. (e), and must have satisfied the requirement under s. 445.095 (4).

(g) The person must have successfully passed a comprehensive examination under s. 445.04 (3) (b) and a jurisprudence examination under s. 445.04 (3) (c).

(2) The eligibility requirements in sub. (1) shall not apply to:

(a) Any person to whom a certificate of apprenticeship was issued before October 1, 1959, and who satisfies the legal requirements in effect at the time of the person's registration; or

(b) Any person who served actively in the armed forces of the United States between August 3, 1951, and October 1, 1959, and who was discharged under conditions other than dishonorable, registers with the examining board within 6 months of the date of discharge, and who satisfies the legal requirements in effect at the time the person entered the armed forces.

History: 1971 c. 213 s. 5; 1971 c. 228 s. 44; 1971 c. 301, 307; 1975 c. 39 ss. 654, 654n, 732 (2); 1975 c. 199; 1979 c. 175 ss. 29, 53; 1979 c. 221 ss. 662, 2202 (45); Stats. 1979 s. 445.045; 1981 c. 380; 1981 c. 391 s. 211; 1983 a. 485; 1991 a. 316; 1999 a. 85; 2013 a. 114; 2017 a. 304, 331; 2019 a. 137.

Cross-reference: See also ch. FD 1, Wis. adm. code.

445.06 Renewal of licenses. (1) The renewal date for a funeral director's license is specified under s. 440.08 (2) (a), and the renewal fee for such license is determined by the department under s. 440.03 (9) (a).

(2) In order to renew a license under this chapter, the applicant shall furnish proof, to the satisfaction of the examining board, of all of the following:

(a) That the applicant is doing business at a recognized funeral establishment.

(b) That the applicant has satisfied the applicable continuing education requirements under s. 445.07.

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; 2007 a. 20; 2011 a. 146; 2019 a. 137.

Cross-reference: See also chs. FD 1 and 4, Wis. adm. code.

445.07 Continuing education. (1) In order to renew a license under this chapter, an applicant shall, except as provided in sub. (2), furnish proof of having satisfied the following:

(a) For the renewal of a license that expires on the first renewal date after the date on which the examining board initially granted the license, completion of 4 hours of continuing education subsequent to the date the applicant was granted the initial license. The examining board shall, in the rules promulgated under sub. (3), specify permitted or required subjects for the continuing education under this paragraph, which shall be subjects that the examin-

ing board determines prepare a new licensee for practice as a funeral director.

(b) For each renewal subsequent to the renewal described in par. (a), completion of 15 hours of continuing education in the previous 2-year licensure period.

(2) (a) The examining board may waive the requirement under sub. (1) (a) in cases where the examining board is satisfied that an applicant would be unable to satisfy the requirement prior to the renewal date.

(b) Subsection (1) (a) does not apply to an applicant who was granted a reciprocal license under s. 445.08.

(3) The examining board shall promulgate rules to implement this section.

History: 2019 a. 137.

445.08 Reciprocity in issuance of licenses. Any person holding a valid license as a funeral director or embalmer in another state having requirements substantially equal to those in this state for a funeral director's license may apply for a license to practice in this state by filing with the examining board a certified statement from an authorized official of that state that verifies the person's licensure in that state. An applicant for licensure under this section shall pass the jurisprudence examination under s. 445.04 (3) (c) and shall satisfy the requirement under s. 445.045 (1) (b). Thereupon the examining board may, upon the payment of the required fee, issue a funeral director's license.

History: 1971 c. 213 s. 5; 1971 c. 301; 1975 c. 39 ss. 656, 657, 732 (2); 1975 c. 199; 1977 c. 29; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.08; 1981 c. 380; 1981 c. 391 s. 211; 1983 a. 485; 1997 a. 27; 2001 a. 107; 2003 a. 321 s. 116; 2017 a. 331.

Cross-reference: See also s. FD 1.12, Wis. adm. code.

445.09 Display of licenses. Funeral director's licenses and certificates of apprenticeship shall be displayed conspicuously in the place of business conducted by the licensee or where the licensee or apprentice is employed.

History: 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.09; 1983 a. 485.

445.095 Apprenticeship, funeral directors. (1) (a) 1. A person desiring to become an apprentice as a funeral director and who satisfies all of the following shall apply on a form provided for the purpose and appear before the examining board or any duly appointed representative of the examining board:

a. The applicant is 18 years of age or older.

b. The applicant holds a high school diploma or possesses equivalent education as defined by the examining board.

c. The applicant does not have an arrest or conviction record, subject to ss. 111.321, 111.322, and 111.335.

d. The applicant has completed a 16-hour certification class approved by the examining board or has satisfied the requirement under s. 445.045 (1) (e).

e. The applicant pays the fee specified in s. 440.05 (6).

2. The application under subd. 1. must be substantiated by the oath of the applicant.

3. When the examining board is satisfied that an applicant for apprenticeship satisfies the requirements for granting a certificate of apprenticeship, it shall grant the applicant a certificate of apprenticeship.

(c) A certificate of apprenticeship issued under this section shall be renewable annually upon the payment on January 1 of each year of the renewal fee specified in s. 440.08 (2) (b).

(2) (a) 1. Except as provided in subd. 2., the examining board may recognize only one funeral director apprenticeship at a funeral establishment in a given year for each funeral director that is employed full time at the funeral establishment.

2. The examining board may recognize up to 2 funeral director apprenticeships at any funeral establishment at which less than 3 funeral directors are employed full time in a given year.

(b) The term of a registered apprentice shall be recognized only when the apprentice is employed in a funeral establishment under the personal supervision of a licensed funeral director. For

purposes of this paragraph, supervision, when the apprentice is in the preparation room, requires that the apprentice is within the funeral director's line of sight.

(2m) All apprentices under this chapter shall be paid at least the minimum wage in effect in this state.

(3) All apprentices shall be governed by subch. I of ch. 106 and apprenticeship rules of the department of workforce development.

(3g) All apprentices registered under this section shall report at least semiannually to the examining board upon forms provided by the department. Failure to submit the required reports shall constitute grounds for termination of the apprenticeship. The semiannual report shall show the number of hours served by the apprentice, the number of bodies the apprentice has assisted in embalming or otherwise prepared for burial or disposition during such period, and the number of funeral services at which the apprentice has assisted, and give any other information required by the examining board. The data contained in the report shall be certified to as correct by the licensed funeral director under whom the apprentice has served during that period.

(3r) When an apprentice enters the employment of a licensed funeral director, the apprentice shall immediately notify the examining board, giving the name and place of business of the funeral director whose service the apprentice has entered. If, at any time thereafter, the apprentice leaves the employment of the licensed funeral director whose service the apprentice has entered, the licensed funeral director shall give the apprentice an affidavit showing the length of time served as an apprentice with that employer, and the work done in detail, which affidavit shall be filed with the examining board and made a matter of record in that office. If the apprentice thereafter enters the employment of another licensed funeral director in this state, the applicant shall forthwith report such employment to the examining board. No person may serve or attempt to serve as an apprentice under a funeral director until the person has notified the examining board as required under this subsection.

(4) Before an apprentice is eligible to receive a funeral director's license, the apprentice shall present, in connection with the other evidence required by this chapter, affidavits from the several licensed funeral directors under whom the apprentice has worked, showing that the apprentice has, during the term of his or her apprenticeship, assisted in embalming for burial or shipment at least 25 bodies, has assisted in preparing 25 dead human bodies for burial or transportation, other than by embalming, and has assisted in at least 25 funeral services during the apprenticeship.

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; 2005 a. 266; 2009 a. 291; 2017 a. 304; 2019 a. 137.

Cross-reference: See also chs. FD 1 and 2, Wis. adm. code.

445.10 Term of apprenticeship. (1) The term of an apprenticeship for a funeral director shall begin on the date of registration and shall continue for a period of not more than 4 years from the time of first registration unless an extension, not to exceed one additional year, is granted by the examining board. After 4 years have elapsed or, if an extension is granted, after the expiration of the extension, the apprenticeship may not be continued unless the apprentice again completes an approved certification class described in s. 445.095 (1) (a). If the apprentice again completes such a certification class, an additional 4-year period, subject to extension, shall begin as provided in this subsection. An apprenticeship not continued as provided in this subsection shall terminate. The provisions of this subsection shall be suspended while a registered apprentice is an active member of the military of the United States.

(2) In all applications of apprentices for licenses as funeral directors under this chapter, the eligibility of the applicant to take the examination shall be determined by the records filed with the examining board.

(6) The examining board may limit, suspend or revoke a certificate of apprenticeship, or reprimand an apprentice, for violation of any provision of this chapter.

(7) An apprentice who has allowed a certificate of apprenticeship to lapse or who has had an apprenticeship suspended or revoked, may within one year after such lapse or suspension or revocation make application for reregistration, but not more than 2 such reregistrations shall be allowed by the examining board. The examining board may, at its discretion, allow an apprentice credit under a registration for the time actually served under a previous registration; provided, that if the previous registration has been suspended or revoked for cause, not more than 75 percent of the time previously served shall be credited on the reregistration.

History: 1975 c. 39 s. 732 (2); 1975 c. 199; 1977 c. 418; 1979 c. 175 ss. 29, 53; 1979 c. 221 ss. 662, 2202 (45); Stats. 1979 s. 445.10; 1983 a. 485; 2017 a. 304.

445.105 Funeral establishment permits. (1) No person may conduct, maintain, manage, or operate any funeral establishment unless the examining board has issued the person a permit for the funeral establishment and the permit is conspicuously displayed in the funeral establishment, except that a permit is not required for funeral services held in any building or part of a building that is erected under s. 157.11 (1), private residence, church, or lodge hall, if dead human bodies are not embalmed, cared for, or prepared for burial or transportation, in the building, residence, church, or lodge hall.

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

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

(b) A licensed funeral director is in charge of the funeral establishment and the funeral director is also in charge of no more than 2 other funeral establishments and at least one of the funeral establishments of which the funeral director is in charge has a preparation room.

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

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

(2s) The funeral director in charge of the funeral establishment under sub. (2m) shall have full charge, control, and supervision of all funeral directing and embalming services at the funeral establishment, and that funeral director shall ensure that the funeral establishment operates in compliance with this chapter and rules promulgated by the examining board.

(3) Applications for funeral establishment permits shall be made on forms provided by the department and filed with the department and shall be accompanied by the initial credential fee determined by the department under s. 440.03 (9) (a). The renewal date for a funeral establishment permit is specified under s. 440.08 (2) (a), and the renewal fee for such permit is determined by the department under s. 440.03 (9) (a).

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

(5) No operator of a funeral establishment shall allow any licensed funeral director to operate out of such funeral establishment unless such licensed funeral director is the operator of or an employee of the operator of 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; 2005 a. 266; 2007 a. 20; 2011 a. 146.

Cross-reference: See also chs. FD 1 and 2, Wis. adm. code.

Licensing requirements prohibit operators of funeral establishments from allowing free-lance funeral direction. The statute does not prohibit operation of 2 establishments from one location nor regular use of a church for funeral services. 60 Atty. Gen. 147.

445.11 Register; change of address. The examining board shall keep a register of the names and business address of all persons to whom licenses or certificate of registration are issued under this chapter, the number and date of each license or certificate, and date of renewal. The register shall be available for purchase at cost.

History: 1975 c. 39 s. 732 (2); 1975 c. 199; 1977 c. 418; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.11; 1983 a. 485; 1987 a. 27.

445.12 Prohibited practices. (1) No funeral director may embalm a dead human body when he or she has information reasonably indicating crime in connection with the cause of death, until permission of the coroner or medical examiner has first been obtained.

(2) No licensed funeral director may sign a certificate stating that he or she has embalmed or prepared a dead human body, when in fact, some other person embalmed or prepared said dead human body; provided, that this subsection shall not be construed as preventing a registered apprentice funeral director assisting the licensed funeral director from so certifying.

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

(a) The solicitation of memberships or the sale of stock or memberships in any association organized under ch. 185 or 193 by any person who is not a licensed funeral director.

(b) The solicitation or sale of burial agreements under s. 445.125 (1) and the solicitation and sale of burial agreements under s. 445.125 (3m) to the extent permitted under sub. (3g) and s. 445.125 (3m).

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

1. Knowingly contacting a prospective purchaser of a burial agreement in a hospital, health care facility or similar facility or institution.

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

3. Contacting a prospective purchaser of a burial agreement by door-to-door solicitation or in a manner that violates rules promulgated by the examining board under s. 445.125 (3m) (j) 2.

(b) A licensed funeral director, agent of a licensed funeral director, operator of a funeral establishment or agent of an operator of a funeral establishment may solicit the sale of a burial agreement under s. 445.125 (3m) by contacting any person if any of the following applies:

1. The prospective purchaser requests the contact.

2. The contact is part of a mass-mailing, television, radio, print or other type of advertising campaign that is not directed solely toward persons in a hospital, health care facility or similar

facility or institution or toward the relatives of a person whose death is imminent or appears to be imminent.

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

(3r) No licensed funeral director or operator of a funeral establishment may do any of the following:

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

(b) Authorize an insurance intermediary licensed under ch. 628 to sell or solicit the sale of a burial agreement under s. 445.125 (3m) (b) 2. a. unless the insurance intermediary meets the training requirements established by the examining board by rule under s. 445.125 (3m) (j) 1. a.

(4) No licensed funeral director or operator of a funeral establishment may publish, or cause to be published, any false, misleading or fraudulent advertisement, or take undue advantage of patrons or commit any fraudulent act in the conduct of business, or do any other act not in accord with the rules established by the department of health services and the examining board and not in accord with proper business practice as applied to the business or profession of funeral directing and embalming.

(5) Any licensed funeral director who knowingly permits any person not licensed as a funeral director to embalm or prepare for burial any body under his or her jurisdiction, or who permits any person not licensed as a funeral director to hold or conduct any funeral service for which he or she is responsible, or who permits any person not licensed as a funeral director to remove any dead human body from any home, hospital or institution for preparation, or who permits any person under his or her supervision or associated with him or her to violate the provisions of this chapter, shall be guilty of violating the provisions of this chapter and subject to the penalties provided therein. The foregoing provisions shall not be construed as to restrict the activities of a duly registered apprentice operating under the supervision of a licensed funeral director.

(6) No licensed funeral director or operator of a funeral establishment may operate a mortuary or funeral establishment that is located in a cemetery or that is financially, through an ownership or operation interest or otherwise, connected with a cemetery. No licensed funeral director or his or her employee may, directly or indirectly, receive or accept any commission, fee, remuneration or benefit of any kind from any cemetery, mausoleum or crematory or from any owner, employee or agent thereof in connection with the sale or transfer of any cemetery lot, outer burial container, burial privilege or cremation, nor act, directly or indirectly, as a broker or jobber of any cemetery property or interest therein.

(7) No licensed funeral director or operator of a funeral establishment may sell or cause to be sold any shares of stocks, certificates of membership or any other form of certificate which provides for any burial benefit or any rebate at the time of death to the holders thereof. This subsection does not prohibit the sale of burial agreements to the extent permitted under, and that are in 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; 2005 a. 441; 2007 a. 20 s. 9121 (6) (a).

Cross-reference: See also chs. FD 2 and DHS 135 and 136, Wis. adm. code.

If subsidiary corporations have prohibited financial connections, their corporate structure will not save them from the prohibitions of ss. 157.067 (2) and 445.12 (6). Those statutes are not unconstitutionally vague. *Cemetery Service, Inc. v. Department of Regulation and Licensing*, 221 Wis. 2d 817, 586 N.W.2d 191 (Ct. App. 1998), 97-2115.

Sub. (6) and s. 157.067 (2), which prohibit the joint ownership or operation of a cemetery and a funeral home, do not violate the equal protection or due process

clauses of the Wisconsin and U.S. constitutions. *Porter v. State*, 2018 WI 79, 382 Wis. 2d 697, 913 N.W.2d 842, 16–1599.

Whether parent and subsidiary corporations violate sub. (6), which prohibits an operator of a funeral establishment from being connected with a cemetery, depends upon the facts relating to legal separateness of the parent and subsidiary corporations. 78 Atty. Gen. 5.

445.125 Burial agreements. (1) BURIAL AGREEMENTS FUNDED BY TRUSTS. (a) 1. Except as provided in sub. (3m), whenever a person, referred to in this subsection as the depositor, makes an agreement with another person selling or offering for sale funeral or burial merchandise or services, referred to in this subsection as the beneficiary, for the purchase of a casket, outer burial container not preplaced into the burial excavation of a grave, combination casket–outer burial container or other receptacle not described in sub. (4) (a) 2. for the burial or other disposition of human remains or for the furnishing of funeral or burial services, either of which is intended to be provided for the final disposition of the body of a person, referred to in this subsection as the potential decedent, wherein the use of such personal property or the furnishing of such services is not immediately required, all payments made under the agreement shall be and remain trust funds, including interest and dividends if any, until occurrence of the death of the potential decedent, unless the funds are sooner released upon demand to the depositor, after written notice to the beneficiary.

2. Such agreements may be made irrevocable as to the first \$3,000 of the funds paid under the agreement by each depositor.

3. Any interest or dividends accruing to a trust fund under subd. 2. may be made irrevocable.

4. Any depositor who made an irrevocable agreement under subd. 2. may designate a different beneficiary at any time prior to death, after written notice to the current beneficiary.

(b) 1. All trust funds under par. (a) shall be deposited with a bank or trust company within the state whose deposits are insured by the federal deposit insurance corporation, deposited in a savings and loan association or savings bank within the state whose deposits are insured by the federal deposit insurance corporation, or invested in a credit union within the state whose savings are insured by the national board, as defined in s. 186.01 (3m), and shall be held in a separate account in the name of the depositor, in trust for the beneficiary until the trust fund is released under either of the conditions provided in par. (a) 1.

2. In the event of the death of the depositor before the death of the potential decedent, title to funds under par. (a) shall vest in the potential decedent, and the funds shall be used for the personal property and services to be furnished under the contract for the funeral of the potential decedent.

3. The depositor shall be furnished with a copy of the receipts, certificates or other appropriate documentary evidence showing that the funds under par. (a) have been deposited or invested in accordance with this subsection. The depositor or the beneficiary shall furnish the bank, trust company, savings bank, savings and loan association or credit union with a copy of the contract.

4. The bank, trust company, savings bank, savings and loan association, or credit union shall release the trust funds under par. (a) to the beneficiary upon receipt of both a written statement of the beneficiary that the agreement was complied with and one of the following:

a. A certified copy of the certificate of death of the potential decedent.

b. An affidavit made by the beneficiary of the potential decedent's death, in the form prescribed under s. 69.02 (1) (c), if the bank, trust company, savings bank, savings and loan association, or credit union consents to receipt of the affidavit. The affidavit shall be accompanied by an invoice for the cost of the services and personal property for which release of the funds is sought. If the bank, trust company, savings bank, savings and loan association, or credit union consents to receipt of the affidavit and to release of the funds, it is immune from civil liability for the amount of the funds so released.

(c) The payment pursuant to this subsection of such fund and any interest or dividends which may have accumulated shall relieve the bank, trust company, savings bank, savings and loan association or credit union of any further liability for such funds, interest or dividends. A bank need not comply with ch. 223 to accept and disburse deposits under this subsection.

(3m) BURIAL AGREEMENTS FUNDED WITH PROCEEDS OF LIFE INSURANCE POLICIES. (a) In this subsection:

1. “Agent” means an authorized representative of a funeral director or operator of a funeral establishment.

2. “Burial agreement” means a written agreement between an operator of a funeral establishment or funeral director and a person in which the operator of the funeral establishment or funeral director agrees to provide to a person, after that person is deceased, funeral merchandise or funeral services.

3. “Cash advance item” means personal property or a service that is obtained by a funeral director or operator of a funeral establishment from a 3rd party and that is paid for by the funeral director or operator of the funeral establishment on behalf of, and subject to reimbursement from, a person purchasing funeral merchandise or funeral services from the funeral director or operator of the funeral establishment. “Cash advance item” includes cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians or vocalists, nurses, obituary notices, gratuities and death certificates.

4. “Funeral merchandise or funeral services” means personal property or services typically sold or provided in connection with the final disposition of human remains, including caskets or other primary containers not preplaced into the burial excavation of a grave, rental, temporary or disposable caskets or containers, outer burial containers not preplaced into the burial excavation of a grave, transportation containers, funeral clothing and accessories, embalming services and funeral directing services. “Funeral merchandise or funeral services” does not include a cash advance item or opening and closing costs that are associated with the burial of a deceased person.

(b) 1. A licensed funeral director, an operator of a funeral establishment, an agent of a licensed funeral director or, subject to par. (c), an agent of an operator of a funeral establishment may sell or solicit the sale of a burial agreement that is funded with the proceeds of a life insurance policy if all of the following apply:

a. The burial agreement meets the requirements specified in pars. (d) to (f) and in the rules promulgated by the examining board under par. (j) 1. b.

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

2. a. A licensed funeral director or operator of a funeral establishment may authorize an agent who is an insurance intermediary licensed under ch. 628, and who meets the training requirements established by the examining board under par. (j) 1. a., to sell or solicit the sale of a burial agreement that is funded with the proceeds of a life insurance policy and that meets the requirements specified in pars. (d) to (f).

b. A licensed funeral director or operator of a funeral establishment shall report to the examining board the identity of any agent authorized by the licensed funeral director or operator of the funeral establishment under subd. 2. a. and provide evidence satisfactory to the examining board that such agent meets the training requirements established by the examining board by rule under par. (j) 1. a. The examining board shall promulgate rules establishing requirements and procedures for making reports and providing the evidence required under this subd. 2. b.

c. A licensed funeral director or operator of a funeral establishment is responsible for and bound by any act of an agent, authorized by the licensed funeral director or operator of the funeral establishment under subd. 2. a., that is within the scope of the agent's apparent authority, while a contract under par. (c) 1.

between the agent and the licensed funeral director or operator of the funeral establishment remains in force, and after that time until the licensed funeral director or operator of the funeral establishment has made reasonable efforts to recover from the agent any forms for burial agreements provided to the agent by the licensed funeral director or operator of the funeral establishment and other indicia of agency. Reasonable efforts shall include a formal demand in writing for return of the indicia, and notice to the examining board if the agent does not comply with the demand promptly.

(c) 1. No agent of an operator of a funeral establishment may solicit the sale of or sell a burial agreement funded with the proceeds of a life insurance policy unless he or she has a contract with the operator of the funeral establishment that authorizes him or her to act as the agent of the operator of the funeral establishment and that satisfies the requirements established by the examining board by rule under par. (j) 1. c.

2. If an agent of an operator of a funeral establishment solicits the sale of or sells a burial agreement funded with the proceeds of a life insurance policy, the agent shall do all of the following at the time of solicitation:

a. Disclose to the prospective purchaser of the burial agreement the identity of the funeral establishment of which he or she is an agent.

b. Furnish to the applicant a copy of the booklet prepared and distributed by the examining board under par. (j) 3. that describes the differences between funding a burial agreement with the proceeds of a life insurance policy under this subsection and entering into a burial agreement funded by a trust under sub. (1).

(d) A burial agreement that is funded with the proceeds of a life insurance policy shall specify in the agreement the funeral establishment that will be used to provide the funeral services or funeral merchandise to be provided under the agreement.

(e) 1. A burial agreement that is funded with the proceeds from a life insurance policy shall include a provision setting forth the nature and extent of any price guarantee for the funeral merchandise or funeral services that are to be provided under the burial agreement.

2. If an agent solicits and sells a burial agreement that is funded with the proceeds of a life insurance policy, the licensed funeral director who owns the funeral establishment or is an agent of the operator of the funeral establishment that will provide funeral merchandise or funeral services under the burial agreement shall ratify the burial agreement in writing and with his or her signature.

(f) The price of any funeral merchandise or funeral services provided under a burial agreement funded with the proceeds of a life insurance policy may not exceed the price for the merchandise or services that, at the time that the merchandise is provided or the services are performed, is set forth in the funeral establishment's general price list required under the funeral industry practices regulations of the federal trade commission.

(g) Before an agent, a licensed funeral director or an operator of a funeral establishment accepts an applicant's initial premium for a burial agreement that is funded or will be funded by a life insurance policy, the agent, funeral director or operator of a funeral establishment shall comply with the requirements under par. (h) and shall, in a writing that is clear and conspicuous, disclose the following information to the applicant:

1. The fact that a life insurance policy is involved in or connected to, or is being used to fund, the burial agreement.

2. The type of insurance instrument that is funding the burial agreement.

3. The effect on the burial agreement of all of the following:

a. Changing the life insurance policy, including changing the assignment of the policy proceeds, changing the beneficiary designation or changing the use of the proceeds.

b. Any penalties incurred by the policyholder as a result of failing to make premium payments.

c. Any penalties incurred or money received as a result of cancellation or surrender of the life insurance policy.

4. The nature of the relationship between the insurance intermediary who solicited or is selling the life insurance policy and the funeral establishment that will be providing funeral or burial merchandise or services under the burial agreement.

5. The relationship of the life insurance policy to the funding of the burial agreement and the existence and terms of any guarantees, other than a guarantee specified in subd. 6., relating to the burial agreement.

6. A list of the funeral merchandise and funeral services that are applied for or contracted for under the burial agreement and all relevant information concerning the price of the funeral services provided under the burial agreement, including a statement as to whether the purchase price of the funeral merchandise or funeral services provided under the burial agreement is guaranteed at the time of the purchase of the burial agreement or whether the purchase price of the funeral merchandise or funeral services provided under the burial agreement is to be determined at the time of need, and a statement that the price of the funeral merchandise or funeral services is subject to the limit specified in par. (f).

7. All relevant information concerning what occurs, and whether any entitlements or obligations arise, if there is a difference between the proceeds of the life insurance policy and the amount of money actually needed to fund the burial agreement.

8. Any restrictions, including geographic restrictions, or penalties relating to delivery or performance under the burial agreement, including any restrictions or penalties relating to the inability of the operator of the funeral establishment to perform.

9. A statement as to whether a sales commission or other form of compensation is being paid to the agent who sold or solicited the sale of a burial agreement and, if so, the identity of the persons to whom the commission or other compensation is paid.

(h) If an applicant under par. (g) is terminating a trust established under sub. (1), the agent, licensed funeral director or operator of the funeral establishment shall, before accepting the applicant's initial premium, furnish written notice to the examining board that satisfies requirements established by the examining board by rule under par. (j) 1. d., and may not accept the applicant's initial premium until 30 days after providing written notice under this paragraph.

(hm) An agent authorized by a licensed funeral director or operator of a funeral establishment under par. (b) 2. a. may not engage in unfair or deceptive acts or practices specified in the funeral industry practices regulations of the federal trade commission, and shall comply with requirements to prevent unfair or deceptive acts or practices specified in such regulations.

(i) 1. A licensed funeral director or operator of a funeral establishment who, either directly or through an agent, solicits the sale of or sells a burial agreement funded with the proceeds of a life insurance policy shall maintain a record of the burial agreement that identifies the life insurance policy used to fund the agreement.

2. The funeral director under subd. 1. or the funeral director in charge of the funeral establishment under subd. 1. shall make a record maintained under subd. 1. available to the examining board if the board submits a written request to examine the record to the funeral director at least 3 days before the examination is to occur.

(j) 1. The examining board shall promulgate rules establishing all of the following:

a. Training requirements that an insurance intermediary licensed under ch. 628 must satisfy to sell or solicit the sale of a burial agreement under this subsection.

b. Minimum standards that an individual burial agreement must satisfy if it is funded with the proceeds of a life insurance policy.

c. Minimum standards that a contract between an agent and an operator of a funeral establishment must satisfy to authorize the agent to sell or solicit the sale of a burial agreement funded with the proceeds of a life insurance policy on behalf of the operator of the funeral establishment.

d. The form and content of written notice that a licensed funeral director, operator of a funeral establishment or agent of a licensed funeral director or operator of a funeral establishment is required to provide to the examining board under par. (h).

2. The examining board may promulgate rules establishing standards for marketing practices for a burial agreement that is funded with the proceeds of a life insurance policy, including standards for telephone solicitation of prospective purchasers. The rules promulgated under this subdivision may prohibit a method of telephone solicitation if the examining board determines that the prohibition is necessary to protect the public.

3. The examining board shall prepare and distribute a booklet that describes the differences between funding a burial agreement with the proceeds of a life insurance policy under this subsection and entering into a burial agreement funded by a trust under sub. (1). The examining board may charge a reasonable fee for the cost of preparation and distribution of the booklet.

(4) **APPLICABILITY.** (a) This section shall not apply to any of the following:

1. A contract to provide funeral and burial service for any person if such contract is incidental to maintaining such person in a home, hospital or institution.

2. The sale or delivery of cemetery lots, graves, outer burial containers preplaced into the burial excavation of a grave, cremation urns, mausoleum spaces, as defined in s. 157.061 (10), or grave or cemetery lot markers or monuments before their use is required or the sale of undeveloped spaces, as defined in s. 157.061 (17).

(bn) Sections 701.0410 to 701.0418 do not apply to an agreement, interest, or dividend that is made irrevocable under sub. (1) (a) 2. to 4.

History: 1973 c. 227; 1977 c. 40; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.125; 1981 c. 64; 1983 a. 448, 485, 538; 1985 a. 29; 1989 a. 307; 1991 a. 39, 221; 1995 a. 295; 1999 a. 9; 2001 a. 16; 2003 a. 167; 2005 a. 134; 2013 a. 92.

Cross-reference: See also ch. FD 6, Wis. adm. code.

445.13 Investigations; hearing; revocation of licenses. (1) Subject to the rules promulgated under s. 440.03 (1), the examining board may make investigations, subpoena witnesses, conduct hearings, limit, suspend or revoke a license of a funeral director, a certificate of registration of an apprentice or a permit of an operator of a funeral establishment and reprimand a funeral director, apprentice or operator of a funeral establishment for any violation of 15 USC 45 and 57, of this chapter or of any rule of the department of health services or the examining board, for unprofessional conduct, including misrepresentation or fraud in obtaining the license, permit or certificate of registration, or for any violation of this chapter or any rule of the examining board by an agent authorized by the funeral director or operator of the funeral establishment under s. 445.125 (3m) (b) 2. a.

(1e) In addition to or in lieu of a reprimand or limitation, suspension or revocation of a license or permit under sub. (1), the examining board may assess against any person who violates s. 445.12 (3g) or (3r) or 445.125 (3m) or a rule promulgated under s. 445.125 (3m) (j) a forfeiture of no more than \$1,000 for each violation.

(1m) The examining board shall investigate an allegation that a funeral director has failed to do any of the following:

(a) Mail or present a death record within 10 days after receipt from the person responsible for completing the medical certification under s. 69.18 (2).

(b) Within any period of 180 days, mail or present 6 or more death records within the 2-day time limit under s. 69.18 (1) (bm).

(c) Obtain the written permission to effect final disposition required under s. 69.18 (3) (b).

(d) Mail a report of final disposition required under s. 69.18 (3) (a) before effecting a final disposition, as defined in s. 69.01 (11).

(2) No reprimand or order limiting, suspending or revoking a license, certificate of registration or permit, or no assessment of forfeiture, shall be made until after a hearing conducted by the examining board. This subsection does not apply to a license, certificate of registration or permit that is limited or suspended under s. 440.13 (2) (c) or that is revoked under s. 440.12.

History: 1975 c. 39 ss. 657j, 657o, 732 (2); 1977 c. 418; 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.13; 1983 a. 485; 1985 a. 315; 1995 a. 27 s. 9126 (19); 1995 a. 295; 1997 a. 191, 237; 2007 a. 20 s. 9121 (6) (a); 2017 a. 334.

Cross-reference: See also ch. FD 3, Wis. adm. code.

445.14 Funeral directors; who to employ. No public officer, employee or officer of any public institution, physician or surgeon shall send, or cause to be sent, to any funeral director, the corpse of any deceased person, without having first made due inquiry as to the desires of the next of kin, or any persons who may be chargeable with the funeral expenses of such deceased person, and if any such kin or person is found, his or her authority or direction shall be received as to the disposal of such corpse.

History: 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.14; 1983 a. 485.

445.145 Printed advertising. A person may not, in any advertisement by newspaper, periodical, Internet web page, telephone book listing, direct mail, or electronic mail solicitation, represent 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.

History: 2005 a. 266.

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

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

(2) A funeral director who fails to do the acts described under s. 445.13 (1m) (b) or who fails to do the act described under s. 445.13 (1m) (c), upon being convicted and fined for a 2nd offense, may have his or her license suspended or revoked, and, if revoked, may not be relicensed for at least one year and only after a regular examination.

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; 2005 a. 266; 2007 a. 20 s. 9121 (6) (a).

445.16 Exceptions. No provision of this chapter shall apply to, or in any way interfere with the duties of any officer of any public institution, nor with the duties of any officer of a medical college, county medical society, anatomical association, accredited college of embalming or any other recognized person carrying out the statutes prescribing the conditions under which donated or indigent dead human bodies are held subject for anatomical study; nor with the customs or rites of any religious sect in the burial of their dead.

History: 1979 c. 175 s. 29; 1979 c. 221 s. 662; Stats. 1979 s. 445.16; 1981 c. 390; 1983 a. 485.