



The Florida Senate

Interim Project Report 2003-138

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Committee on Regulated Industries

Senator James E. "Jim" King, Jr., President

FUNERAL AND CEMETERY REGULATION

SUMMARY

This report examines the current state of funeral and cemetery industries in Florida and the effectiveness of applicable regulation. Overall, statutory safeguards are being utilized to protect Florida's citizens. Nevertheless, there have been instances in which regulatory oversight has been less than effective. However, regulators are taking remedial measures in the hope of preventing such instances from occurring in the future. Therefore, staff recommends that no legislative action be taken at this time to alter the jurisdictional scope of the Department of Business and Professional Regulation and the Department of Banking and Finance. Staff does recommend, however, that the Senate consider the following industry proposals:

- Additional education for application and renewal of direct disposer registration;
- Additional requirements for identification of human and cremated remains;
- Completion of land surveys prior to the sale of undeveloped cemetery property;
- Uniform grave size and spacing; and
- Provision of additional information to consumers regarding goods and services.

BACKGROUND

The regulation of funeral directing, embalming, and direct disposition (cremation) of human remains is governed by ch. 470, F.S. Regulation is administered by the Board of Funeral Directors and Embalmers within the Department of Business and Professional Regulation (DBPR). The regulation of cemeteries, and the sale of preneed burial rights, preneed funeral or burial merchandise, and preneed funeral or burial services, is governed by ch. 497, F.S. Regulation is administered by the Board of Funeral and Cemetery Services within the Department of Banking and Finance (DBF).

Media accounts earlier in 2002 raised concerns over the effectiveness of funeral and cemetery regulation. On March 1, 2002, the Attorney General and the Comptroller filed civil charges against Texas-based Service Corporation International (SCI) and S.C.I. Funeral Services of Florida Inc., doing business as Menorah Gardens and Funeral Chapels, for deceiving clients at two of its cemeteries in Broward and Palm Beach counties. The charges alleged burial of bodies in the wrong graves, the sale of inadequate burial space, and the double sale of individual burial plots. In Noble, Georgia, a crematory operator was charged with multiple felonies of theft by deception for failure to cremate the remains of hundreds of bodies that were improperly disposed on crematory grounds. The incident begged the question as to whether Florida's citizens were protected from such practice. Further, a joint examination by the Office of Program Policy Analysis and Government Accountability (OPPAGA) and the Auditor General questioned the effectiveness of DBF's oversight of cemetery companies and preneed sellers, and recommended that administration of ch. 497, F.S., be transferred to DBPR. (Report No. 02-21, March 2002)

Based upon those events, SB2238 was filed during the 2002 Regular Session. SB2238 provided, in part, for the transfer of regulatory authority over ch. 497, F.S., from DBF to DBPR and the creation of a new Board of Funeral Directors and Cemeteries. It required additional education for application and renewal of direct disposer registration, imposed stricter requirements for disinterment and reinterment of human remains and for identification of human remains. SB2238 also required that written burial contracts contain a complete description of any grave space to be used for interment of human remains, and prohibited the preneed sale of undeveloped cemetery property prior to the filing of a site plan for board approval. SB 2238 passed the Senate but died in messages.

Based upon the foregoing, committee staff examined the current state of the funeral and cemetery industries and applicable regulation to determine whether legislative measures were required to ensure consumer protection.

METHODOLOGY

Committee staff met with representatives of DBF and DBPR. Staff met with various professional organizations representing the funeral and cemetery industries and reviewed industry draft legislation. Staff spoke with consumers and with regulators in other states. Staff reviewed legislative developments in other jurisdictions, and reviewed current Florida law.

FINDINGS

Staff's findings indicate that the primary concern regarding Florida's death care industries is the adequacy of DBF's regulation under ch. 497, F.S. This is illustrated by the Menorah Gardens incidents and the joint examination by OPPAGA and the Auditor General regarding the adequacy of DBF's cemetery inspection and examination process. According to AARP and the Funeral Consumers Alliance (FCA), the biggest problem within Florida's death care industry is that current preneed laws do not protect consumers.

DBF Inspection Process

Pursuant to Rule 3F-6.006, F.A.C., DBF is required to inspect cemeteries at least once every year. Pursuant to s. 497.431, F.S., DBF is required to examine the business of any licensee writing preneed contracts at least once every three years. According to the OPPAGA/Auditor General report, DBF failed to perform inspections and examinations as required. Further, the report indicated that when examinations and inspections were conducted and deficiencies were noted, DBF failed to follow up on the problems. For example, a 1996 examination report of Menorah Gardens cemeteries revealed two decedents buried in the wrong plots, and a 1998 examination revealed three decedents buried in the wrong plots. However, the report indicates that DBF took no disciplinary or follow-up action.

The report further indicates that the problems noted above resulted because, since 1995, DBF was organized on a decentralized basis with eight regional offices, each operating under its own authority to perform the inspections and examinations and to impose sanctions for noncompliance. The report also indicates that DBF was relying on each examiner to

exercise appropriate judgment as to whether to follow up on noted deficiencies. DBF's Bureau of Funeral and Cemetery Services, which is located in Tallahassee, had no authority over the regional offices, and there was inconsistency from office to office regarding interpretation of DBF's authority and its policies.

Committee staff met with bureau personnel to discuss this matter. Staff learned that the bureau had attempted to provide training to all of its regional offices; however, it had no control when an office declined training. The Menorah Gardens incidents involved an office that had refused training.

Recently, DBF has reorganized its administration to provide oversight of the regional offices by the Tallahassee bureau office. DBF indicates this measure will enable it to establish uniform standards within the regional offices. Personnel also indicated that with the upcoming merger of DBF with the Department of Financial Services in January 2003, the bureau will have access to an improved complaint tracking computer system, which will make it easier for the bureau to manage cases. It is too early to determine whether these measures will resolve DBF's problems; however, DBF appears to be committed to working to improve its oversight.

Preneed Sales

Pursuant to s. 497.417, F.S., certificateholders authorized to sell preneed contracts for funeral services or merchandise, or burial services or merchandise are required to deposit certain amounts of funds in trust to guarantee performance of services and provision of merchandise at the time of the customer's death. The required amounts are as follows: 70 percent of the purchase price for services sold and facilities rented; 100 percent of the purchase price collected for all cash advance items; and 30 percent of the purchase price or 110 percent of the wholesale cost, whichever is greater, for each item of merchandise.

AARP and FCA suggest that adequate consumer protection requires 100-percent trusting of all services and merchandise. However, under s. 497.417, F.S., the accumulated interest is required to remain in the trust to guarantee performance. As alternatives to trusting funds, certificateholders may obtain surety bonds or sell contracts funded by insurance policies. In either case, the entire contract price is guaranteed.

FCA also suggests that ch. 497, F.S., should provide for 100-percent refunds. Section 497.419, F.S.,

provides for 100-percent refunds for preneed contracts cancelled within 30 days of the date the contract was executed, for all unused services and merchandise. According to DBF, this is the longest rescission period in the country. After 30 days, a consumer may cancel a contract for the services, facilities, and cash advance items¹ portions of a contract and still receive a full refund for those items. Funeral merchandise, however, is only refundable if, at the time the certificateholder is required to fulfill its obligation under the contract, it cannot actually deliver the merchandise within a reasonable time. Burial rights are also not refundable; however, the consumer has the option of selling the burial right or merchandise to other consumers. Staff's research indicates that the value of merchandise and burial rights generally increases over time; therefore, it appears that the likelihood of a consumer suffering from such refund restriction is slim. In fact, the resale market for burial rights is very active. Section 497.329, F.S., mandates registration of burial rights brokers.

Crematories

Committee staff also examined the state of the direct disposal industry. DBPR personnel indicated to staff that complaints involving direct disposers, cinerator facilities, and direct disposer facilities were relatively low. From January 1, 2002 to December 13, 2002, DBPR opened 39 disciplinary investigations and received 50 consumer complaints. In comparison, according to the Florida Funeral Directors Association, there were 151,000 deaths in Florida in 2001. According to DBPR, many complaints are determined to lack legal sufficiency, and many investigations lead to a finding that no probable cause exists to support a finding of violations under ch. 470, F.S.

DBPR reported no incidents comparable in scale to the incident in Georgia. Further, Florida Statutes provide for disciplinary action by the board. Section 470.036, F.S., provides that the board may enter an order imposing one or more penalties, which may include permanent license revocation or suspension, an administrative fine up to \$5,000 for each count or separate offense, issuance of a reprimand, probation, restriction of the authorized scope of practice, and assessment of costs for investigation and prosecution. According to DBPR, the board does not hesitate to impose revocation for serious violations. Based upon

the foregoing, it appears that regulation of the direct disposal industry is working effectively.

Other Jurisdictions

During 2002, a number of states passed laws regarding death care. However, the subject matter often involved general licensing and regulatory provisions already found in Florida. For example, Alabama House Bill 53 provided for the certification and regulation of preneed funeral and cemetery merchandise and services. Missouri Senate Bill 892 authorized pre-purchasing of cemetery services. Connecticut Senate Bill 543 provided for annual inspection of crematories. Tennessee House Bill 1106 provided that funeral directors contracting out cremation services must utilize licensed crematory facilities. One bill of note, however, is Georgia House Bill 1481, which provided that any person who throws away or abandons a dead body commits the offense of abandonment of a dead body. The offense is a first degree felony punishable by imprisonment for a period of one to three years. The bill also provided for identification of remains by attachment of a marker to the body prior to cremation. The marker is removed prior to cremation and is then placed inside the container with the remains. The outside of the container must also be marked with identification. Similar identification requirements for Florida are proposed later in this report.

Industry Initiatives

Industry leaders provided staff with two drafts for proposed legislation that take initiatives toward regulatory reform. At present, neither draft has been filed with the Legislature.

The Independent Funeral Directors Association of Florida, The Florida Monument Builders Association, and the Florida Funeral & Cemetery Advocacy have formed a coalition called the Funeral Consumer Protection Alliance (FCPA). The FCPA proposal is essentially the same as SB2238 with a few added measures. It provides, in part, for the following:

- Transfer of regulatory authority over ch. 497, F.S., from DBF to DBPR;
- Creation of the new Board of Funeral Directors and Cemeteries and provides for membership;
- Additional education for application and renewal of direct disposer registration;
- Additional requirements for disinterment and reinterment of human remains and for

¹ Cash advance items are items provided by a party other than the licensee and include items such as flowers, music and minister's fees.

identification of human remains, including penalties;

- Minimum size and spacing requirements for grave spaces;
- Prohibition of preneed sales of undeveloped cemetery property prior to the filing of a site plan for board approval; and
- Requirement that sellers offering to provide merchandise, burial rights and services provide additional information to consumers, including additional information in contracts.

The Florida Funeral Directors Association, the Florida Morticians Association, and the Funeral and Cemetery Alliance of Florida formed a committee known as the Legislative Partnership Committee for 2003 (LPC03) to address similar issues. LPC03 formed during the past summer and met 12 times from June 26 to October 14, 2002. Based upon its meetings, LPC03 drafted proposals that provide, in part, the following:

- Merger of ch.470, F.S., and ch. 497, F.S.;
- Additional requirements for identification of human remains;
- Minimum size and spacing requirements for grave spaces; and
- Requirement of a map and professional land survey prior to the sale of undeveloped grave space.

Staff has consolidated the FCPA and LPC03 provisions into five categories that include the following: administrative; health and public safety; identification of human and cremated remains; identification of burial plots; and consumer protection.

Administrative

FCPA proposes merging the Board of Funeral Directors and Embalmers with the Board of Funeral and Cemetery Services and transferring authority over ch. 497, F.S., to DBPR. LPC03 proposes merging ch. 470, F.S., and ch. 497, F.S., but makes no proposal regarding merger of the boards. Staff's findings, as discussed earlier, indicate that DBF is in the process of remedial changes and will be merging with the Department of Financial Services. Further, DBPR is in the process of a multi-year reengineering and technology project, which will switch all its divisions to one computer system, a system that allows full-time public access via the internet. The goal of the project is to use technology to increase employee efficiency and enhance customer services through automated processes such as on-line licensing. This project is not

yet complete. Based on the foregoing, staff believes that it is premature for the Senate to take action to either merge the boards or the statutes during the upcoming session.

Health and Public Safety

FCPA proposes additional education requirements for application and renewal of direct disposer registration, including coursework in ethics, microbiology-infectious diseases, thanatology², and accounting. Staff believes that FCPA's proposal is designed to protect public health and safety and should therefore be considered by the Senate.

Identification of Human and Cremated Remains

As noted earlier, a major concern in the death care industry is the identification of human remains. FCPA proposes the required presence of a licensed funeral director and a disinterment permit during any disinterment and reinterment of human remains. Failure to comply would result in a first-degree misdemeanor. FCPA and LPC03 recommend attaching identification markers on outer burial and cremation containers in addition to identification tags on human bodies and in cremation containers. FCPA proposes that a violation of such provision be punishable by third-degree felony. Finally, FCPA proposes that funeral directors handling the interment of human remains file a death certificate addendum, which provides the cemetery address and location where the body is buried. It appears that the foregoing provisions would result in minimal additional costs. However, the added protection would be significant. Given the significant emotional distress to loved ones that may result from the loss of human remains, staff recommends that the Senate consider these proposals.

Identification of Burial Plots

Given the Menorah Gardens incidents, both FCPA and LPC03 focused attention on ensuring proper identification of burial plots. Both groups recommend completion of professional land surveys prior to the sale of undeveloped cemetery property. Both groups also recommend requirements for uniform grave size and spacing. Staff learned that the standard size of a burial vault is 33 inches. In the past, some cemeteries have provided for burial plots that were only 36 inches wide. Excavation is performed by heavy machinery,

² The term thanatology refers to the study of death and dying.

which leaves little margin for error during excavation for new graves. Absent excavation by hand, vaults can be damaged and human remains disturbed. FCP recommends that minimum size and spacing requirements be developed by rulemaking. LPC03 recommends adult grave space minimum measurements of 40 inches in width and 96 inches in length, with ground cover of at least 12 inches. DBF personnel indicate that the foregoing proposals regarding surveys and grave dimensions and spacing merit considerable attention. Based on the foregoing, staff recommends that the Senate consider these proposals.

Consumer Protection

FCPA proposes that licensees offering to sell burial rights, merchandise, or services be required to provide information to customers that include the licensee's bylaws, a complete description of the burial right, a description of the monument or marker to be used on the grave site, and a map of the cemetery with a physical description of the burial right, including dimensions. FCPA also proposes that written burial contracts contain a complete description of any grave space to be used for interment of human remains. Currently, s. 497.333, F.S., requires a licensee to provide a consumer with an accurate list of merchandise and services, accurate prices, a good faith estimate of all fees and costs a consumer will incur, a copy of the licensee's bylaws upon request, and a board-approved written contract prior to purchase. It appears that FCPA's proposals would provide consumers with greater specificity regarding goods and services, especially regarding the location of burial space. Therefore, staff recommends that the Senate consider these proposals.

- Provision of additional information to consumers regarding goods and services.

RECOMMENDATIONS

Staff recommends that the Senate take no action in the coming legislative session to alter the jurisdictional scope of the Department of Business and Professional Regulation and the Department of Banking and Finance. Staff does recommend, however, that the Senate consider the following measures:

- Additional education for application and renewal of direct disposer registration;
- Additional requirements for identification of human and cremated remains;
- Completion of land surveys prior to the sale of undeveloped cemetery property;
- Uniform grave size and spacing; and