

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 907 Funeral & Cemetery Services
SPONSOR(S): Representative Detert
TIED BILLS: **IDEN./SIM. BILLS:** SB 2016

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Banking & Securities (Sub)</u>	<u>6 Y, 0 N</u>	<u>Cutchins</u>	<u>Whitfield</u>
2) <u>Commerce</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill addresses several areas relating to consumer concerns in the regulation of certain funeral and cemetery activities. Specifically, the bill:

- Expands the definitions in Chapter 497, Florida Statutes, to encompass terms used in the direct disposal or cremation of human remains;
- Sets statutory standards for grave spaces and sizes;
- Requires the creation of certified land surveys to map the location and identification of certain grave spaces;
- Provides for the identification of human remains on the inside and outside of burial containers;
- Prohibits persons who do not hold valid certificates of authority to sell preneed contracts for funeral and funeral services and merchandise from advertising to sell or making arrangements to sell such contracts;
- Clarifies contract cancellation and refund provisions; and
- Revises the duties of the Board of Funeral and Cemetery Services of the Department of Financial Services by requiring the board to review issues relating to inactive or revoked certificates of authority and by authorizing the board to perform the necessary procedures to protect consumers in the case of inactive or revoked certificates of authority.

Chapter 497, F.S. regulates cemeteries and the sale of preneed cemetery and funeral merchandise and service contracts in Florida. During the past two years, troublesome developments in the funeral and cemetery industry have been brought into the public's eye by numerous media reports. Staff from the Council on Competitive Commerce, the Banking Committee, and the Business Regulation Committee were directed to monitor the 13 meetings held by a group of industry representatives (Legislative Partnership Committee of 2003 or LPC03) which formed to work towards consensus on the issues. Not all members of the industry chose to participate in the work of this group.

After the LPC03 compiled its legislative recommendations into report form, committee staff conducted a meeting to discuss the potential consensus and controversy surrounding these issues. The meeting was attended by representatives from the LPC03, the regulatory agencies, and individuals representing the Board of Funeral Directors & Embalmers and the Independent Funeral Directors Association. Staff presented each issue and took testimony on whether there was consensus on the issue or whether it was still subject to controversy between the groups represented. The provisions of this bill reflect those issues covered by ch. 497, F.S., which were not objected to by any person in attendance at the [staff conducted] meeting.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0907a.com.doc
DATE: March 17, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a “no” above, please explain:

The bill increases the level of government regulation over funeral and cemetery businesses licensed under ch. 497, F.S., for the purposes of consumer protection.

B. EFFECT OF PROPOSED CHANGES:

This bill addresses several areas relating to consumer concerns in the regulation of certain funeral and cemetery activities. Chapter 497, F.S., regulates cemeteries and the sale of preneed cemetery and funeral merchandise and service contracts in Florida. This bill expands the definitions in ch. 497, F.S., to encompass terms used in the direct disposal or cremation of human remains. The use of cremation as a means of disposal of human remains has steadily increased in the state to the point that approximately 50 percent of all disposals are accomplished in that fashion. The preneed sale of contracts for cremation merchandise and services has also increased sparking the need for the statutory language governing the regulation of these activities to more accurately reflect industry practices. The terms “niche” and “urn” are added to the definitions in s. 497.005, F.S., and the definitions of the terms “casket,” “ossuary,” and “scattering garden” are expanded to incorporate more complete descriptions of direct disposal or cremation activities.

During the past two years, troublesome developments in the funeral and cemetery industry have been brought into the public’s eye by numerous media reports. News stories about disturbed remains in a South Florida cemetery (Menorah Gardens), lost remains in a Volusia County cemetery (Bellview), and the cremation debacle in North Georgia prompted considerable consumer concern about Florida’s regulatory system for death care industry activities in the state.

Currently, the Department of Financial Services (DFS)¹ regulates the activities of funeral and cemetery businesses that relate to a consumer’s financial interests and the Department of Business and Professional Regulation regulates the professional aspects of human remains disposal practiced by funeral directors and direct disposers². The DFS’s Board of Funeral and Cemetery Services assists the department in regulating the financial interest activities participated in by cemetery owners and operators, funeral directors, and any other person in the death care industry that contracts for the sale of preneed services and merchandise. The regulatory scheme for these activities requires oversight of the participating company’s financial stability and contractual behavior with its clients. Investigations require the expertise of financial examiners, which is a duty shared with other regulatory units under the department. Over the years, regulation of cemetery activities has been added to the department’s duties as a result of financial interest concerns by consumers. Rulemaking authority is shared by the department and the board.

The Department of Business and Professional Regulation’s (DBPR) Board of Funeral Directors and Embalmers is the professional regulatory body that oversees the health, safety, and welfare regulations of those involved in the disposal of human remains. The regulatory scheme for these activities requires oversight

¹ The DFS Bureau of Funerals and Cemeteries was part of the former Department of Banking and Finance.

² Relating to cremation.

of the professional's personal knowledge of proper disposal practices and the latest health and safety developments related to those practices. Continuing education and testing requirements assists the board in verifying the knowledge level of the licensees. Funeral directors may also be owners and operators of cemeteries and may be involved in contracting for the sale of preneed services and merchandise.

Both DFS and DBPR have been involved in investigating the complaints lodged against several of Florida's funeral and cemetery companies. The DFS's Bureau of Funerals & Cemeteries asked the Attorney General to bring suit against Menorah Gardens (which is pending) and an overseer has been appointed to monitor the cleanup and records keeping at Menorah. Bellview is currently in receivership and most of the properties have been sold.

Part of the problems at these cemeteries centers on the relatively small size allotted for each grave, the very close spacing of the grave sites and the lack of proper burial identification. This bill sets the statutory standard for each adult grave space to be at least 42 inches in width and 96 inches in length, excepting preinstalled vaults in designated areas.³ Additionally, effective October 1, 2003, the bill requires a cemetery company to prepare, maintain, and make available to the department, a map and a certified land survey that will provide certain reference markers for the layout of grave spaces. The map must show the number of grave spaces, the location of each grave, and the dimensions of a standard adult grave space. This must be done prior to the sale of any grave spaces in undeveloped areas of a licensed cemetery after the October trigger date.

The October date also triggers the human remains identification requirements provided by this bill. Any human remains interred, entombed, scattered, or otherwise placed for final rest are to be identified on the outer burial container or on the inside of a crypt or niche with a tag or permanent identifying marker containing the name of the decedent and the date of death, if available.

Chapter 497, F.S., requires anyone who is engaged in the activity of selling preneed contracts for funeral or cemetery merchandise and services to first acquire a certificate of authority from the department. This bill includes advertising to sell or making arrangements for preneed contracts in the realm of activities covered by the certificate of authority. The bill also clarifies that preneed contract cancellation privileges under s. 497.419, F.S., do not extend to burial rights, merchandise, or services that have already been used by the purchaser. Finally, the bill revises the current requirement that the Board of Funeral and Cemetery Services under DFS must review the trust funds, trust agreements or evidence of all outstanding preneed contracts of the holder of an inactive or revoked certificate of authority. The revision makes this review permissive, but increases the board's authority to include the performance of procedures the board deems necessary to protect consumers in the case of inactive or revoked certificates of authority.

Staff from the Council on Competitive Commerce, the Banking Committee, and the Business Regulation Committee were directed to monitor the 13 meetings held by a group of industry representatives (Legislative Partnership Committee of 2003 or LPC03) which formed to work towards consensus on a number of funeral and cemetery regulation issues. At the initial meeting of the LPC03, four representatives of the Florida Funeral Director's Association (FFDA), four representatives of the Florida Funeral & Cemetery Alliance (formerly FCA), four representatives of the Florida Morticians Association (FMA), and four representatives of the Independent Funeral Director's of Florida met and outlined a proposed purpose and work plan. The Independent Funeral Director's of Florida voted to not formally associate with the partnership at its June 9 board meeting.

After the LPC03 compiled its legislative recommendations into report form, committee staff conducted a meeting to discuss the potential consensus and controversy surrounding these issues⁴. The meeting was attended by representatives from the LPC03, the regulatory agencies, and individuals representing the Board of Funeral Directors & Embalmers and the Independent Funeral Directors Association. Staff presented each issue and took testimony on whether there was consensus on the issue or whether it was still subject to

³ Preinstalled vaults are already positioned to accept burial containers and would not be subject to the potential earth removal and spacing problems inherent in areas where new spaces must be integrated into developed areas that do not have preinstalled vaults.

⁴ Full report available at www.legislativepartnership.com

controversy between the groups represented. The provisions of this bill reflect those issues covered by ch. 497, F.S., which were not objected to by any person in attendance at the [staff conducted] meeting.

C. SECTION DIRECTORY:

Section 1 amends s. 497.005, F.S., expanding the definitions relating to cemetery products to include terms relating to the direct disposal of human remains or cremation.

Section 2 creates s. 497.306, F.S., to provide statutory standards for the size, layout and identification of grave spaces which must be surveyed and mapped prior to the sale of any grave spaces in undeveloped areas of licensed cemeteries. Adult grave spaces existing in developed areas of a cemetery before October 1, 2003, are exempt from these standards.

Section 3 creates s. 497.307, F.S., to provide statutory standards for the identification of human remains on the outside and inside of burial containers. This section applies to human remains put to final rest on or after October 1, 2003.

Section 4 amends s. 497.405, F.S., to include advertising to sell and arranging for preneed contracts in those activities that are prohibited unless the person engaged in these activities has a valid certificate of authority to sell preneed contracts from the department. This section also adds cremation interment containers to the list of items certain religious-institution-owned cemeteries⁵ may sell to their members and families without a certificate of authority.

Section 5 amends s. 497.419, F.S., to clarify that preneed contract cancellation privileges under s. 497.419, F.S., do not extend to burial rights, merchandise or services that have already been used by the purchaser.

Section 6 amends s. 497.436, F.S., to provide that the Board of Funeral and Cemetery Services may review the trust funds, trust agreements or evidence of all outstanding preneed contracts of the holder of an inactive or revoked certificate of authority. This revision makes the review permissive, but increases the board's rulemaking authority to include the performance of procedures the board deems necessary to protect consumers in the case of inactive or revoked certificates of authority.

Section 7 provides that this act will take effect July 1, 2003; however, as noted the provisions relating to grave size and spacing and identification of human remains will take effect October 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

⁵ Specifically a religious-institution-owned cemetery in counties with a population of at least 960,000 on July 1, 1996.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Licensed cemetery companies will have to obtain the services of a surveyor licensed under ch. 472, F.S., to have a certified land survey of the undeveloped areas to establish the reference markers required by this bill. Depending on the size of the undeveloped area to be surveyed, industry representatives estimate that surveying and placing reference markers the required 200 feet apart will cost from \$500 to \$1000 per survey.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds, does not reduce a county's authority to raise revenue and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES