

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1177 Funeral and Cemetery Industry Regulation  
**SPONSOR(S):** Weatherford and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2856

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Financial Institutions</u>	<u>6 Y, 0 N</u>	<u>Holt</u>	<u>Haug</u>
2) <u>Jobs &amp; Entrepreneurship Council</u>	<u></u>	<u>Holt</u>	<u>Thorn</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
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**SUMMARY ANALYSIS**

The bill addresses the Funeral and Cemetery Industry Regulation. In general, the bill prohibits certain persons from conducting, maintaining, managing, owning, or operating licensees under ch. 479; provides exception; revises regulation and practice of limited licensees; revises provision relating to use of the Internet for continuing education. The bill further revises the frequency with which licensed funeral directors and embalmers are required to complete continuing education courses on HIV/AIDS and revises the qualifications for funeral director licensure. Under certain circumstances, the bill limits the liability exposure to direct disposal establishments, funeral directors, funeral establishments, and cinerator facilities that perform cremation. The bill also replaces terms and makes conforming changes. Exemptions to the Florida Building Code are included for certain structures.

The fiscal impact appears to be minimal

This act takes effect July 1, 2007.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility: The bill creates 497.609, F.S. to provided that a funeral director, direct disposer, funeral establishment, direct disposal establishment or a cinerator facility may accept the deceased's declaration of intent to be cremated if signed by the deceased prior to death as definitive authorization to cremate.

#### B. EFFECT OF PROPOSED CHANGES:

**Sections 1-4, of the bill provide amendments to Part I, Chapter 497, F.S., General Provisions.**

Section 1: The bill amends s. 497.101, F.S., relating to Board of Funeral, Cemetery, and Consumer Services; membership; appointment; terms.—

The bill replaces the term “monument dealer” with “monument retailer” in this section and throughout the statute. Currently, the statute states a monument dealer is appointed to a two year term when the terms of the initial board expire. However, s. 497.101(2), F.S., provides in part:

One member of the board shall be a monument establishment licensed under this chapter as a monument builder or, for board appointments made before June 1, 2006, a licensed monument establishment certified by the department to be eligible for licensure as a monument builder.

According to Department of Financial Services, the term monument retailer should be replaced with monument builder in conformance with s. 497.101(2), F.S.

Section 2: The bill amends s. 497.141(12), F.S., relating to Licensing; general application procedures.—

The bill adds paragraph (e) to the subsection to read in part:

(e)1. It is unlawful for any person regulated under chapter 395<sup>1</sup>, chapter 400<sup>2</sup>, or chapter 429<sup>3</sup>, or any officer, administrator, or board member of such entity if the entity is a firm, corporation, partnership, or association, or any person owning 5 percent or more of such entity to conduct, maintain, manage, own, or operate a licensee under this chapter.

Currently, there is no specific restriction to owning a license under this chapter. This section makes it unlawful for a hospital, nursing home or related health care facility or assisted care facility from owning or managing a license under this chapter. According to DFS, if one of these types of entities were to open or acquire a funeral establishment, it would be very difficult to enforce the prohibition of at-need solicitation as they are intricately involved in the health care profession.

The bill also provides that this paragraph does not apply to a board member of a corporation or organization regulated under chapter 395, chapter 400, or chapter 429, if the board member serves solely in a voluntary capacity, does not regularly take part in the day-to-day operational decisions of the

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<sup>1</sup> Hospital Licensing And Regulation

<sup>2</sup> Nursing Homes And Related Health Care Facilities

<sup>3</sup> Assisted Care Communities

corporation or organization, receives no remuneration for his or her services, and has no financial interest and has no family members with a financial interest in the corporation or organization.

Also, DFS opines that if a patient in a hospital, nursing facility or assisted living facility were to choose to use a funeral or direct disposal establishment owned by the same company as the hospital or nursing facility, it would be very difficult to determine if the funeral or direct disposal establishment violated Chapter 497 by using undue influence or soliciting the family at the time of need.

Section 3: The bill amends 497.143, F.S., relating to Licensing; limited licenses for retired professionals.—

Currently, the statute authorizes licenses for retired professionals to serve the indigent, underserved, or critical need populations. According to DFS, a retired professional does not have to meet the continuing education requirements of licensed funeral directors and embalmers. The statute change amends when licenses can be issued to retired funeral directors to when critical need occurs. The bill defines the term “critical need” for purposes of the section.

Critical need for this type of licensure means issuance of an Executive Order from the Governor of Florida or a Federal order declaring a state of emergency in an area. All such limited licensees shall work for an entity licensed under ch. 497.

Section 4: The bill amends s. 497.162, F.S., relating to Health and safety education.

This section is amended to allow for use of the Internet in the provisions relating to rulemaking in the fulfillment of continuing education for non-licensed personnel

#### **Section 5, of the bill provides amendment to Part II, Chapter 497, F.S., Cemetery Regulation.**

Section 5: The bill amends s. 497.260, F.S., relating to Cemeteries; exemption; investigation and mediation.—

This section requires regulations pertaining to monument installation apply to all cemeteries in the state. Currently, these regulations only apply to licensed cemeteries. There is no data base which contains the location of all non-licensed cemeteries, so enforcement presents a challenge for DFS. These types of cemeteries become known to DFS only after a consumer complaint is filed.

#### **Sections 6-7, of the bill provide amendments to Part III, Chapter 497, F.S., Funeral Directing, Embalming, and Related Services**

Section 6: The bill amends s. 497.367, F.S., relating to Instruction on HIV and AIDS, funeral directors and embalmers.—

The bill requires continuing education training be repeated once every 6 years. Currently, continuing education training is required every 2 years for license renewal. However, the training has remained consistent over the past years and new information is not being presented.

Section 7: The bill amends s. 497.374, F.S., relating Funeral directing; licensure as a funeral director by endorsement; licensure of a temporary funeral director.—

Through information provided to staff by DFS, if a funeral director, who is licensed in another state, wants to be licensed in Florida, he must show that he successfully passed the national examination in mortuary science within the past 10 years. This section eliminates the 10 year requirement and only requires the applicant to have successfully passed the national examination without the time constraints.

**Section 8, of the bill provides amendments to Part V, Chapter 497, F.S., Monument Establishment**

Section 8: The bill amends s. 497.550, F.S., to make conforming changes. The term "monument dealer" is amended to "monument retailer."

**Section 9 provides amendment to Part V, Chapter 497, F.S., Monument Establishment**

Section 9: Presently, a person cannot authorize his or her own cremation, according to information provided by DFS. The bill creates 497.609, F.S. to provide that a funeral director, direct disposer, funeral establishment, direct disposal establishment or a cinerator facility may accept the deceased's declaration of intent to be cremated if signed by the deceased prior to death as definitive authorization to cremate. If this is followed, the funeral professional cannot be subject to a claim by anyone who objects to the cremation.

**Section 10 provides amendments to Chapter 553, F.S., Building Construction Standards**

Section 10: Subsections (5) through (14) of section 318 553.36, Florida Statutes, are renumbered as subsections (6) through (15), respectively, present subsections (15) and (16) are renumbered as subsections (17) and (18), respectively, and new subsections (5) and (16) are added to that section, to read:

553.36 Definitions.--The definitions contained in this section govern the construction of this part unless the context otherwise requires.

(5) "Columbarium" means a permanent structure consisting of niches.

(16) "Private mausoleum" means a structure intended for the private use of a family or group of family members.

**Section 11: The bill amends s. 553.73, F.S., relating to Florida Building Code.--**

This section exempts prefabricated or pre-assembled columbaria and prefabricated or pre-assembled private mausoleums that are not walk-in from the Building Code.

Section 12: Corrects cross-reference.

Section 13: Corrects cross-reference.

Section 14: This act shall take effect July 1, 2007.+

**C. SECTION DIRECTORY:**

Section 1: The bill amends s. 497.101, F.S., relating to Board of Funeral, Cemetery, and Consumer Services; membership; appointment; terms.

Section 2: The bill amends s. 497.141(12), F.S., relating to Licensing; general application procedures.

Section 3: The bill amends 497.143, F.S., relating to Licensing; limited licenses for retired professionals.

Section 4: The bill amends s. 497.162, F.S., relating to Health and safety education.

Section 5: The bill amends s. 497.260, F.S., relating to Cemeteries; exemption; investigation and mediation.

Section 6: The bill amends s. 497.367, F.S., relating to Instruction on HIV and AIDS, funeral directors and embalmers.

Section 7: The bill amends s. 497.374, F.S., relating Funeral directing; licensure as a funeral director by endorsement; licensure of a temporary funeral director.

Section 8: This section makes conforming changes. The term "monument dealer" is amended to "monument retailer."

Section 9: The bill provides amendments to Part VI, Chapter 497, F.S., Cremation, Crematories, and Direct Disposition (liability).

Section 10: The bill renumbers sections. It further defines the terms "columbarium" and "private mausoleum."

Section 11: The bill amends s. 553.73, F.S., to exempt prefabricated or pre-assembled columbaria and to exempt certain prefabricated or pre-assembled private mausoleums from the Florida Building Code.

Section 12: The bill corrects a cross-reference.

Section 13: The bill corrects a cross-reference.

Section 14: Provides effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

Minimal. The cost of rulemaking and the cost of reprogramming the computer systems to meet the new license renewal requirements as it pertains to continuing education are indeterminable at this time.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### D. STATEMENT OF THE SPONSOR

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 22, 2007, the committee on Financial Institutions adopted six amendments in summation as follows:

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| Amendment 1: | For purposes of s.497.143, F.S., defines the term "critical need"   |
| Amendment 2: | Returns to current practice approved course requirement for non-licensed personnel.   |
| Amendment 3: | Allows for use of the Internet in the provisions relating to rulemaking and non-licensed personnel fulfillment of continuing education. |
| Amendment 4: | Removes section 6 relating to cemeteries; exemption; investigation and mediation.   |
| Amendment 5: | Defines the term "columbarium."   |
| Amendment 6: | Defines the term "private mausoleum."   |