

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Banking and Insurance Committee

BILL: CS/SB 2856

INTRODUCER: Senator Crist

SUBJECT: Funeral and Cemetery Industry Regulation

DATE: April 12, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.	Peacock	Deffenbaugh	BI	Favorable
3.			CA	
4.				
5.				
6.				

I. Summary:

The bill prohibits any person regulated by chs. 395, 400, or 429, F.S., relating to hospitals, nursing homes, related health care facilities (including hospices), and assisted care communities, from owning, managing, or operating any business entity whose service or activity is licensed under ch. 497, F.S., related to funerals and cemeteries. It applies this prohibition to any officer, administrator, or board member of an entity if the entity is a firm, corporation, partnership, or any person who owns more than five percent or more of such a business entity. It provides exemptions from the prohibition.

The bill provides that limited licenses may be issued to retired professionals when there is a critical need, and defines critical need. It requires that all limited licensees must be employed by an entity licensed under ch. 497, F.S. In addition, the bill:

- Requires non-licensed operational personnel to complete a required course on communicable disease every six years;
- Provides that the monument installation requirement apply to all cemeteries in this state, including unlicensed cemeteries;
- Provides standards for the ventilation of private and family mausoleums;
- Permits deceased persons to be interned or entombed with the cremated inurned remains of their pets;
- Permits funeral directors and embalmers to complete a continuing education instruction in HIV and AIDS once every six years instead of once every two years;
- Revises requirements for licensure by endorsement for funeral directors; and

- Changes the term “monument dealer” to “monument retailer.”

The bill prohibits claims objecting to cremation against a funeral director, direct disposer, funeral establishment, direct disposal establishment or a cinerator facility under certain conditions.

The bill also defines the “columbarium” and “private mausoleum” for ch. 553, relating to the Florida Building Code, and exempts prefabricated columbaria and private mausoleums from the Florida Building Code.

This bill substantially amends the following sections of the Florida Statutes: 497.101, 497.141, 497.143, 497.162, 497.260, 497.271, 497.273, 497.367, 497.374, 497.550, 553.36, 553.73, 316.515, and 627.702. This bill creates section 497.609, Florida Statutes.

II. Present Situation:

The Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services (department) enforces the provisions of ch. 497, F.S., which regulates funeral directors, embalming, the practice of cremating human remains, cemeteries, cremation services, cemetery companies, monument dealers, and pre-need contracts for funeral merchandise or services.

Chapter 497, F.S., is divided into six parts, with each part corresponding to similar regulatory matters:

- Part I relates to general provisions common to all parts;
- Part II relates to cemetery regulation;
- Part III relates to funeral directors and embalmers;
- Part IV relates to preneed sales;
- Part V relates to monument establishments; and
- Part VI relates to cremation, crematories and direct disposition.

Section 497.101, F.S., provides that the Board of Funeral, Cemetery, and Consumer Services (board), is composed of the following members:

- Two members must be funeral directors licensed under part III of this chapter who are associated with a funeral establishment;
- One member must be a funeral director licensed under part III of ch. 497, F.S., who is associated with a funeral establishment licensed under part III of ch. 497, F.S., which has a valid preneed license issued pursuant to part IV of ch. 497, F.S., and who owns or operates a cinerator facility approved under ch. 403, F.S., and licensed under part VI of ch. 497, F.S.;
- Two members must be persons whose primary occupation is associated with a cemetery company licensed pursuant to ch. 497, F.S.;
- Three members must be consumers who are residents of the state, have never been licensed as funeral directors or embalmers, are not connected with a cemetery or cemetery company licensed pursuant to ch. 497, F.S., and are not connected with the death care industry or the practice of embalming, funeral directing, or direct disposition.

- one of the consumer members must be at least 60 years of age, and
- one must be licensed as a certified public accountant under chapter 473;
- One member must be a monument dealer licensed under ch. 497, F.S.; and
- One member must be the State Health Officer or her or his designee.

Section 497.101, F.S., also provides that there shall not be two or more board members who are directors, employees, partners, shareholders, or members of the same company or partnership or group of companies or partnerships under common control.

Qualification Requirements

Section 497.141, F.S., sets forth the general application procedures for licensure under ch. 497, F.S. It provides specific limits on the types of entities that may apply for licensure. For example, s. 497.141(12)(a), F.S., provides that only a natural person may apply for and be issued the following types of licenses:

- Embalmer apprentice
- Embalmer intern
- Funeral director intern
- Funeral director
- Funeral director and embalmer
- Direct disposer
- Monument establishment sales agent
- Pre-need sales agent

Section 497.141(12)(b), F.S., permits the following licenses to be applied for and issued to a natural person, a corporation, a limited liability company, or a partnership:

- Funeral establishment
- Centralized embalming facility
- Refrigeration facility
- Direct disposal establishment
- Monument establishment
- Cinerator facility
- Removal service
- Pre-need sales business under s. 497.453, F.S.

However, s. 497.141(12)(c), F.S., provides that a cemetery license may only be applied for and issued to a corporation, partnership, or limited liability company. There are no restrictions on the types of other business that ch. 497, F.S., licensees, including business entities or natural persons, may be engaged.

Limited Licenses

Section 497.143, F.S., permits retired funeral and cemetery professionals in good standing to hold a limited license to serve the indigent, underserved, or critical need populations of this state. To obtain a limited license, applicants must pay a fee, not to exceed \$300, and submit an affidavit stating that he or she has been licensed to practice in any jurisdiction in the United

States for at least 10 years in the profession for which the applicant seeks a limited license. Limited licensees may practice only in the employ of public agencies or institutions or nonprofit agencies or institutions.

Operational Personnel

Section 497.162, F.S., requires that non-licensed operational personnel of direct disposal establishments, cinerator facilities, removal services, refrigeration facilities, centralized embalming facilities, and all non-licensed individuals who intend to be involved in the removal or transportation of human remains on behalf of a funeral establishment, direct disposal establishment, or cinerator facility must complete one course approved by the division on communicable diseases, within 10 days after the date that they begin functioning as operational personnel on behalf of any entity that is regulated by this ch. 497, F.S. The course may not exceed 3 hours and must be offered at approved locations throughout the state. The course may consist of approved videocassette courses and other types of audio, video, or home study.

At-Need Solicitation

Section 497.164, F.S., regulates the solicitation of sales of burial rights, merchandise, or services by licensees. Section 497.164(5), F.S., prohibits at-need solicitation. It provides that at-need solicitation of sales of burial rights, merchandise, or services is prohibited. No person may contact the family or next of kin of a deceased person to sell services or merchandise unless the person has been initially called or contacted by the family or next of kin of such person or persons and requested to provide services or merchandise.

Section 497.005(2), F.S., defines “at-need solicitation” to mean “any uninvited contact by a licensee or her or his agent for the purpose of the sale of burial services or merchandise to the family or next of kin of a person after her or his death has occurred.”

Unlicensed Cemeteries

Section 497.260, F.S., provides that the cemetery provisions of ch. 497, F.S., and all rules adopted pursuant to this chapter apply to all cemeteries except for:

- Religious institution cemeteries of less than 5 acres which provide only single-level ground burial;
- County and municipal cemeteries;
- Community and nonprofit association cemeteries which provide only single-level ground burial and do not sell burial spaces or burial merchandise;
- Cemeteries owned and operated or dedicated by a religious institution prior to June 23, 1976;
- Cemeteries beneficially owned and operated since July 1, 1915, by a fraternal organization or its corporate agent;
- A columbarium consisting of less than one-half acre which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning. The religious institution establishing such a columbarium shall ensure that the columbarium is perpetually kept and maintained in a manner consistent with the intent of this chapter. If the religious institution relocates, the religious institution shall relocate all of the urns and

- remains placed in the columbarium which were placed therein during its use by the religious institution;
- Family cemeteries of less than 2 acres which do not sell burial spaces or burial merchandise; and
 - A mausoleum consisting of 2 acres or less which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning. The religious institution establishing such a mausoleum must ensure that the mausoleum is kept and maintained in a manner consistent with the intent of this chapter and limit its availability to members of the religious institution. The religious institution establishing such a mausoleum must have been incorporated for at least 25 years and must have sufficient funds in an endowment fund to cover the costs of construction of the mausoleum.

Mausoleum Standards

Section 497.271(2), F.S., requires adequate provision for ventilation and drainage of mausoleums. All newly constructed and significantly altered or renovated mausoleums and columbaria must comply with applicable building codes, and the standards set forth in s. 497.271, F.S., which include:

- The requirement that material and workmanship used must ensure its durability and permanence, and the safety, convenience, comfort, and health of the community;
- The exterior of any vault, niche, or crypt must be able to be readily examined at any time by persons authorized by law to do so;
- The structure must contain adequate provision for drainage and ventilation;
- The structure must be of fire-resistant;
- The structure must be resistant to hurricane and other storm damage to the highest degree provided under applicable building codes;
- Each crypt must be securely and permanently sealed with durable materials to prevent the escape of effluvia or odors; and
- Interior and exterior fastenings for hangers, clips, doors, and other objects must be of materials that provide strength and durability, and must be properly installed.

Monuments Installation

Section 497.278, F.S., prohibits cemeteries from charging a fee for the installation of a monument purchased or obtained from and to be installed by a person or firm other than the cemetery company or its agents. Cemeteries must mark the place on the grave where the marker or monument is to be installed and shall inspect the installation when completed to verify that a monument is installed on the proper grave. Cemeteries may not require any person or firm that installs, places, or sets a monument to obtain any form of insurance, bond, or surety or make any form of pledge, deposit, or monetary guarantee as a condition for entry on or access to cemetery property. These requirements only apply to licensed cemeteries.

Part IV of ch. 553, F.S., establishes the Florida Building Code. Section 553.72, F.S., provides that:

The purpose and intent of this act is to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single, unified state building code, to be called the Florida Building Code, which consists of a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state and to the enforcement of such requirements and which will allow effective and reasonable protection for public safety, health, and general welfare for all the people of Florida at the most reasonable cost to the consumer. The Florida Building Code shall be organized to provide consistency and simplicity of use. The Florida Building Code shall be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. The Florida Building Code shall provide for flexibility to be exercised in a manner that meets minimum requirements, is affordable, does not inhibit competition, and promotes innovation and new technology. The Florida Building Code shall establish minimum standards primarily for public health and lifesafety, and secondarily for protection of property as appropriate.

Part I of ch. 553, F.S., establishes the “Florida Manufactured Building Act of 1979.” It provides, in s. 553.355, F.S., that “the Florida Building Code and the Florida Fire Prevention and Lifesafety Codes shall be the minimum construction requirements governing the manufacture, design, construction, erection, alteration, modification, repair, and demolition of manufactured buildings.” Section 553.73, F.S., provides exemptions to the Florida Building Code.

HIV/AIDS Education

Section 497.367, F.S., requires that licensed funeral directors and embalmers must complete an approved continuing educational course on human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) at least every 2 years.

III. Effect of Proposed Changes:

Board of Funeral, Cemetery, and Consumer Services

The bill amends s. 497.101(3), F.S., relating to members of the Board of Funeral, Cemetery, and Consumer Services, to reference monument builder instead of monument dealer. This provision corrects a cross reference to s. 497.101(2), F.S., which provides for membership on the board of a monument establishment licensed as a monument builder.

Licensure Disqualification of Certain Business Entities

The bill amends s. 497.141(12), F.S., to prohibit persons or business entities regulated by ch. 395, F.S., relating to hospitals, ch. 400, F.S., relating to nursing homes and related health care facilities, including hospices, and ch. 429, F.S., relating to assisted care communities from conducting, maintaining, owning, managing, or operating a licensee under ch. 497, F.S. This prohibition also applies to persons who serve on the boards of those disqualified business entities, or any person who owns more than five percent or more of such a business entity.

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

operational decisions of the 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.

According to the department, if one of these types of entities were to open or acquire a funeral establishment, it would be very difficult for the department to enforce the prohibition of at-need solicitation as they are intimately involved in the health care of the purchaser.

Limited Licenses for Retired Professionals

The bill amends s. 497.143, F.S., to provide that licenses can be issued to retired professionals at “times of critical need.” It deletes the provision that authorizes licenses for retired professionals to serve the indigent or underserved. The bill defines the term “critical need” to mean:

- An executive order from the Governor declaring a state of emergency;
- A request from the director of the Division of Emergency Management as state coordinating officer for the state’s comprehensive emergency management plan;
- A request from the Florida Emergency Mortuary Operations Response System sponsored by the University of Florida in collaboration with the Maples Center for Forensic Medicine;
- A request from any district medical examiner; or
- Activation of the state continuity of operations plan.

The bill also deletes the provision that restricts the recipients of a limited licensed to practice only in the employ of public agencies or institutions or nonprofit agencies or institutions and which provide professional liability insurance coverage for the acts or omissions of the limited licensee. The bill also deletes the standard for determining indigency.

The bill requires that all limited licensees must be employed by an entity licensed under ch. 497, F.S.

Health and Safety Education

The bill amends s. 497.162, F.S., which requires non-licensed operational personnel who are involved in the removal or transportation of human remains to complete a course on communicable disease within 10 days of being hired, to require that the course be taken once every six years. Current law permits audio, video, and home study courses and requires that the course not exceed three hours at approved locations around the state.

Cemeteries and Mausoleums

The bill amends s. 497.260, F.S., to provide that the monument installation requirement in s. 497.278, F.S., apply to all cemeteries in this state, including unlicensed cemeteries.

The bill amends s. 497.271(2), F.S., to provide that private and family mausoleums, where all crypts are bordering on an exterior wall, the pressure-relief ventilation must be provided from the crypt to the outside of the mausoleum through the exterior wall. Current law requires adequate provision for ventilation and drainage.

Burial with Pets

The bill amends s. 497.273, F.S., relating to the authorized functions of a cemetery company, to provide that ch. 497, F.S., does not prohibit the interment or entombment of the inurned cremated animal remains of the decedent's pet or pets with the decedent's human remains or cremated human remains. The bill requires that:

- The human remains or cremated human remains are not commingled with the inurned cremated animal remains; and
- The interment or entombment with the inurned cremated animal remains is with the authorization of the decedent or other legally authorized person.

HIV and AIDS Education

The bill amends s. 497.367, F.S., relating to continuing education instruction in HIV and AIDS, for funeral director and embalmers, to require that the instruction be repeated as part of every third biennial re-licensure, i.e., once every six years. Current law requires instruction every 2 years for license renewal. According to an industry representative, the training has remained consistent over the past years, new information is not being presented, and current industry standards for the handling of human remains incorporate sufficient safeguards to obviate the need for biennial instruction.

Licensure as a Funeral Director by Endorsement

The bill amends s. 497.374, F.S., to eliminate the requirement that applicant for licensure by endorsement as a funeral director and must have successfully completed a state, regional, or national examination in mortuary science within 10 years prior to the date of application. The requirement to successfully complete a state, regional, or national examination is retained.

Monument Establishments

The bill amends s. 497.550, F.S., to change the term "monument dealer" to "monument retailer."

Liability

The bill creates s. 497.609, F.S., to provide that a person may not make a claim objecting to the cremation of a deceased person against a funeral director, direct disposer, funeral establishment, direct disposal establishment or a cinerator facility if the person is given a copy of:

- The deceased's signed declaration of intent to be cremated, or
- A court order directing cremation.

The bill also permits the funeral professional to rely on the authorization of the legally authorized person if that person represents that persons in the same class or higher class do not object to the cremation is not aware of any objection to the cremation by other in the same class or higher class.¹ Currently, according to the Department of Financial Services, a person cannot authorize their own cremation.

¹ The term "class" refers to persons at the same level of priority as provided in s. 497.005(37), F.S. ., which defines the term "legally authorized person" to mean:

Building Code

The bill amends s. 553.36, F.S., relating to the definition for building construction standards for manufactured buildings, to define the term “columbarium” to mean a structure of building that is substantially exposed above the ground and that is intended to be used for the inurnment of cremated remains. This provision conforms to the definition for “columbarium” in s. 497.005(16), F.S.

It also defines the term “private mausoleum” to mean “a mausoleum s defined in s. 497.005(40), F.S., for the private use of a family or group of family members.”

The bill amends s. 316.515, F.S., to correct the cross reference to s. 553.36(13), F.S.

Amends s. 553.73, F.S., relating to the Florida Building Code, to exempt prefabricated columbaria and private mausoleums from the Florida Building Code.

Insurance

The bill amends s. 627.702, F.S., relating to property insurance, to correct the cross reference to the definition of manufactured building in s. 553.36(13), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

In the priority listed, the decedent, when written inter vivos authorizations and directions are provided by the decedent; the surviving spouse, unless the spouse has been arrested for committing against the deceased an act of domestic violence as defined in s. 741.28 that resulted in or contributed to the death of the deceased; a son or daughter who is 18 years of age or older; a parent; a brother or sister who is 18 years of age or older; a grandchild who is 18 years of age or older; a grandparent; or any person in the next degree of kinship. In addition, the term may include, if no family member exists or is available, the guardian of the dead person at the time of death; the personal representative of the deceased; the attorney in fact of the dead person at the time of death; the health surrogate of the dead person at the time of death; a public health officer; the medical examiner, county commission, or administrator acting under part II of chapter 406 or other public administrator; a representative of a nursing home or other health care institution in charge of final disposition; or a friend or other person not listed in this subsection who is willing to assume the responsibility as the legally authorized person. Where there is a person in any priority class listed in this subsection, the funeral establishment shall rely upon the authorization of any one legally authorized person of that class if that person represents that she or he is not aware of any objection to the cremation of the deceased's human remains by others in the same class of the person making the representation or of any person in a higher priority class.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Funeral directors and embalmers would save the expense of taking the HIV and AIDS course every 2 years. Funeral professionals relocating to Florida will not have to retake the national examination in order to be licensed in Florida by endorsement if they took the examination more than ten years ago.

Hospitals, nursing homes, and health care facilities, including hospices, and assisted living facilities would be prohibited from entering in the funeral and cemetery business.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
