

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: Community Affairs Committee

BILL: CS/CS/SB 2856

INTRODUCER: Community Affairs Committee, Regulated Industries Committee, and Senator Crist

SUBJECT: Funeral and Cemetery Industry Regulation

DATE: April 24, 2007

REVISED: _____

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

I. Summary:

The committee substitute (bill) prohibits certain persons, and 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, from conducting, maintaining, managing, owning, or operating any business entity whose service or activity is licensed under ch. 497, F.S., relating to funerals and cemeteries. Exemptions are provided. Revisions are made to requirements providing for limited licenses to retired professionals when there is a critical need. All limited licensees must be employed by an entity licensed under ch. 497, F.S.

The bill provides that certain employees are required to complete a course on communicable diseases. Revisions are made to monument installation requirements, and standards are provided for certain types of mausoleums. The bill allows the internment or entombment of the remains of inurned cremated pets with the remains a decedent so long as the remains are not commingled. Continuing education requirements for funeral directors and embalmers are revised, and liability protection is provided to funeral directors and others under certain conditions. Prefabricated columbaria and private mausoleums of a certain size and height are exempted from the requirements of the Florida Building Code.

The bill substantially amends sections 497.101, 497.141, 497.143, 497.162, 497.260, 497.271, 497.273, 497.367, 497.374, 497.550, 553.36, and 553.73; conforms cross-references in sections 316.515 and 627.702, and creates section 497.609, Florida Statutes.

II. Present Situation:

Board of Funeral, Cemetery, and Consumer Services (board) - The board, housed within the Department of Financial Services (department), enforces the provisions of ch. 497, F.S., which is divided into the following six parts:

- Part I - General provisions relating to funeral, cemetery, and consumer services.
- Part II – Regulation of cemeteries.
- Part III – Regulation of funeral directing, embalming, and related services.
- Part IV – Regulation of pre-need sales.
- Part V – Regulation of monument establishments.
- Part VI - Regulation of cremation, crematories and direct disposition.

The board is composed of the following members:

- Two funeral directors who are licensed under part III and associated with a funeral establishment.
- One funeral director who is licensed under part III and associated with a funeral establishment also licensed under part III. The funeral establishment must have a valid pre-need license issued under part IV. The funeral director must own or operate a cinerator facility licensed under part VI, and approved under chapter 403.
- Two persons whose primary occupation is associated with a cemetery company licensed pursuant to chapter 497.
- Three residents of the state who have never been licensed as funeral directors or embalmers, who are not connected with a licenses cemetery or cemetery company, and who are not connected with the death care industry or the practice of embalming, funeral directing, or direct disposition. Also, one resident must be at least 60 years of age, and one resident must be a state licensed certified public accountant.
- One monument dealer licensed under chapter 497.
- The State Health Officer or her or his designee.

No two or more persons who are directors, employees, partners, shareholders, or members of the same company or partnership, or group of companies or partnerships under common control, may serve on the board.

Requirements for Licensure - Section 497.141, F.S., establishes the general application procedures for licensure under chapter 497. Specific limits on the types of entities that may apply for licensure are provided. On a natural person may apply for and be issued a license as an embalmer apprentice, an embalmer intern, a funeral director intern, a funeral director, a funeral director and embalmer, a direct disposer, a monument establishment sales agent, or a pre-need sales agent.

Section 497.141(12), F.S., permits a natural person, a corporation, a limited liability company, or a partnership to apply for and be licensed as a funeral establishment, a centralized embalming facility, a refrigeration facility, a direct disposal establishment, a monument establishment, a cinerator facility, as a removal service, or as a pre-need sales business. However, 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 businesses that licensees, including business entities or natural persons, may engage in.

Limited Licenses - Section 497.143, F.S., authorizes 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 of not more than \$300 and submit an affidavit stating that the applicant was licensed to practice in any jurisdiction within the United States for at least 10 years, and licensed 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 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 chapter 497. The course must be approved by the licensing authority, 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 for Services - Section 497.164, F.S., regulates the solicitation of sales of burial rights, merchandise, or services by licensees, and prohibits at-need solicitation of burial rights sales, merchandise, or services. No person may contact the family or next of kin of a deceased person to sell services or merchandise unless the family or next of kin of a deceased person first initiates contact and requests services or merchandise.

Unlicensed Cemeteries – The provisions of part II of chapter 497, and all rules adopted thereto, are applicable to all cemeteries with the exception of:

- Religious institution cemeteries of less than 5 acres providing only single-level ground burial,
- County and municipal cemeteries,
- Community and nonprofit association cemeteries that provide only single-level ground burial, and that do not sell burial spaces or burial merchandise,
- Cemeteries owned and operated by, or dedicated by, a religious institution prior to June 23, 1976,
- Cemeteries beneficially owned by a fraternal organization or its corporate agent, and operated since July 1, 1915,
- Certain columbariums,
- Family cemeteries of less than 2 acres which do not sell burial spaces or burial merchandise, and
- Any mausoleum of 2 acres or less in size, owned by and immediately contiguous to an existing religious institution facility, and subject to local government zoning. The institution must provide assurances relating to maintenance of the mausoleum and must meet other operational requirements.

Mausoleum Standards - Section 497.271, F.S., provides the standards for construction and signification alternation or renovation of mausoleums and columbaria. Rules adopted by the licensing authority are required to provide for adequate ventilation and drainage of mausoleums. Also, all newly constructed and significantly altered or renovated mausoleums and columbaria must comply with applicable building codes, and the following construction standards:

- Material and workmanship must ensure the mausoleum's durability and permanence, as well as ensure 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 authorized persons.
- The structure must be of fire-resistant construction, and 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.
- Interior and exterior fastenings for hangers, clips, doors, and other objects must be of made of strong and durable materials, and must be properly installed.

Monuments Installation – Under s. 497.278, F.S., cemeteries are prohibited from imposing 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 are required to inspect the installation when completed to verify that a monument is installed on the proper grave site. 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 to 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.

Florida Building Code – The Florida Building Code (code) is created in part IV, chapter 553. The purpose of the code is to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single, unified state building code, consisting 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. The enforcement of such requirements 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 code is organized to provide consistency and simplicity of use, and must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. The code is required to establish minimum standards primarily for public health and lifesafety, and secondarily, for protection of property.

The Florida Building Code and the Florida Fire Prevention and Lifesafety Codes contain minimum construction requirements governing the manufacture, design, construction, erection, alteration, modification, repair, and demolition of manufactured buildings.

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:

Section 1 amends subsection (3) of s. 497.101, F.S., to correct a cross-reference relating to membership of the Board of Funeral, Cemetery and Consumer Services.

Section 2 amends subsection (12) of s. 497.141, F.S., to prohibit persons or business entities regulated by chapter 395, relating to hospital licensing and other licensed facilities; chapter 400, relating to nursing homes and related health care facilities; and chapter 429, relating to assisted care communities, from conducting, maintaining, owning, managing, or operating a licensee under chapter 497. The prohibition is applied to persons who serve on the boards of such disqualified business entities, and any person who owns five percent or more of such a business entity. Exceptions are provided for a board member of a corporation or organization regulated under chapters 395, 400, or 429, Florida Statutes, if the 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 in or has no family members with a financial interest in the corporation or organization.

Section 3 amends s. 497.143, F.S., to provide that licenses can be issued to retired professionals at “times of critical need” and deletes the requirement that retired professionals may be used to serve the indigent, underserved, or critical need populations of the state. “Critical need” is defined as an executive order issued by the Governor declaring a state of emergency in an area.

Provisions restricting limited licensees 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 are repealed, and all limited licensees are required to be employed by an entity licensed under chapter 497. The standard for determining indigency is repealed.

Section 4 amends s. 497.162, F.S., to require that each person who is not licensed under chapter 497 but who is employed by an entity licensed under chapter 497, must complete one course on communicable diseases, and the course may be an approved Internet course.

Section 5 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.

Section 6 amends subsection (2) of s. 497.271, F.S., to provide that private and family mausoleums with all crypts bordering on an exterior wall must contain pressure relief ventilation from the crypts to the outside of the mausoleum through the exterior wall.

Section 7 amends s. 497.273, F.S., to authorize the interment or entombment of the incinerated cremated animal remains of a decedent's pet or pets with the decedent's remains so long as the remains are not commingled, and the interment or entombment of the pet or pets remains is with the authorization of the decedent or other legally authorized person.

Section 8 amends s. 497.367, F.S., to require that licensed funeral directors and embalmers who are required to take instruction on HIV and AIDS, must repeat the instruction as part of every third biennial re-licensure (once every six years.)

Section 9 amends s. 497.374, F.S., to repeal the requirement that an applicant for licensure by endorsement as a funeral director must have successfully completed a state, regional, or national examination in mortuary science within 10 years prior to the date of application.

Section 10 amends s. 497.550, F.S., to revise the two categories of monument establishment license from monument builder and monument dealer to monument builder and monument retailer.

Section 11 creates s. 497.609, F.S., to provide that a person may not make a claim against a funeral director, direct disposer, funeral establishment, direct disposal establishment or a cinerator facility objecting to the cremation of a deceased person if the person is given a copy of the deceased's signed declaration of intent to be cremated, or a court order directing cremation.

Persons are prohibited from filing claims objecting to cremations if a funeral professional conducts a cremation under the authorization of the legally authorized person who represents that he or she is not aware of any objection to the cremation by others in the same class or a higher priority class.¹

Section 12 amends s. 553.36, F.S., to define the term "columbarium" to mean a permanent structure consisting of niches. "Private mausoleum" is defined as "a structure intended for the private use of a family or group of family members."

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:

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.

Section 13 amends s. 553.73, F.S., to exempt prefabricated columbaria and private mausoleums which are located in cemeteries regulated under part II of chapter 497, and which are 720 square feet or less, and less than 15 feet in height, from the requirements of the Florida Building Code.

Section 14 amends s. 316.515, F.S., to correct a cross-reference.

Section 15 amends s. 627.702, F.S., to correct a cross-reference

Section 16 provides that the act shall take effect July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require cities and counties to expend funds or limit their authority to raise revenues or receive state-shared revenues as specified by s. 18, Art. VII, State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Funeral directors and embalmers will save the expense of taking the HIV and AIDS course every 2 years. In order to be licensed in Florida by endorsement, funeral professionals relocating to Florida will not have to retake the national examination.

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

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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