

## Senate Bill No. 156

An act relating to funeral and cemetery services; amending s. 497.003, F.S.; revising terminology relating to cemeteries owned by a religious institution; amending s. 497.005, F.S.; defining the term “religious institution”; amending s. 497.103, F.S.; authorizing the Department of Banking and Finance and the Board of Funeral and Cemetery Services to adopt rules to allow for electronic submission of applications, documents, and fees and to provide for certification of compliance in lieu of submission of documents; eliminating a reference to an examination fee; amending ss. 497.117 and 497.131, F.S.; revising terminology designating a trust fund; amending s. 497.213, F.S.; increasing annual license fees for certain cemeteries; amending s. 497.245, F.S.; eliminating reference to annual examination fees; amending ss. 497.341 and 497.405, F.S.; revising terminology relating to cemeteries owned by a religious institution; amending s. 497.407, F.S.; providing initial application and renewal fees for a certificate of authority to sell preneed contracts; revising terminology designating a trust fund; amending s. 497.431, F.S.; eliminating the fee charged to examine the business of any person writing preneed contracts and any guaranteeing organization; revising the expenses that the person or organization being examined is responsible for paying in connection with an examination; amending s. 497.435, F.S.; revising terminology designating a trust fund; amending s. 497.439, F.S.; providing for submission of an application for registration as a preneed sales agent, with application fee, in a form prescribed by department rule and approved by the board; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1), (4), and (5) of section 497.003, Florida Statutes, are amended to read:

497.003 Cemeteries; exemption; investigation and mediation.—

(1) The provisions of this chapter relating to cemeteries and all rules adopted pursuant thereto shall apply to all cemeteries except for:

(a) Religious institution ~~Church~~ cemeteries of less than 5 acres which provide only single-level ground burial.

(b) County and municipal cemeteries.

(c) Community and nonprofit association cemeteries which provide only single-level ground burial and do not sell burial spaces or burial merchandise.

(d) Cemeteries owned and operated or dedicated by a religious institution ~~churches~~ prior to June 23, 1976.

(e) Cemeteries beneficially owned and operated since July 1, 1915, by a fraternal organization or its corporate agent.

(f) A columbarium consisting of less than one-half acre which is owned by and immediately contiguous to an existing religious institution church facility and is subject to local government zoning. The religious institution church 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 church relocates, the religious institution church shall relocate all of the urns and remains placed in the columbarium which were placed therein during its use by the religious institution church.

(g) Family cemeteries of less than 2 acres which do not sell burial spaces or burial merchandise.

(h) A mausoleum consisting of 2 acres or less which is owned by and immediately contiguous to an existing religious institution church or synagogue facility and is subject to local government zoning. The religious institution church or synagogue 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 church or synagogue. The religious institution church or synagogue 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.

(4) Any religious-institution-owned church-owned cemetery that is exempt under paragraph (1)(d), is located in a county with a population of at least 1.3 million persons on July 1, 1996, and was selling merchandise and services to the religious institution's church's members prior to October 1, 1993, may establish one additional exempt cemetery in such county after December 31, 2020, without establishing need under s. 497.201.

(5) Any religious-institution-owned church-owned cemetery exempt under subsection (1), except those cemeteries qualifying under paragraph (1)(d), which becomes affiliated with a commercial enterprise must meet the requirements of s. 497.201.

Section 2. Present subsections (31), (32), and (33) of section 497.005, Florida Statutes, are renumbered as subsections (32), (33), and (34), respectively, and a new subsection (31) is added to that section to read:

497.005 Definitions.—As used in this chapter:

(31) “Religious institution” means an organization formed primarily for religious purposes which has qualified for exemption from federal income tax as an exempt organization under the provisions of s. 501(c)(3) of the Internal Revenue Code of 1986, as amended.

Section 3. Subsections (1) and (4) of section 497.103, Florida Statutes, are amended to read:

497.103 Rulemaking authority of board and department.—

(1) The board has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of this chapter conferring duties upon it. The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer provisions of this chapter conferring duties upon it. The board or the department may also adopt rules to allow for the electronic submission of any applications, documents, or fees required by this chapter. The board or the department may adopt rules to authorize the board or the department to accept certification of compliance with certain requirements of this chapter in lieu of requiring submission of the documents.

(4) The department shall examine the financial affairs of any cemetery company and any preneed sales certificateholder ~~and charge an examination fee as prescribed in s. 497.431.~~

Section 4. Subsection (1) of section 497.117, Florida Statutes, is amended to read:

497.117 Legal and investigative services.—

(1) The Department of Legal Affairs shall provide legal services to the board within the Department of Banking and Finance, but the primary responsibility of the Department of Legal Affairs shall be to represent the interests of the citizens of the state by vigorously counseling the board with respect to its obligations under the laws of the state. Subject to the prior approval of the Attorney General, the board may retain independent legal counsel to provide legal advice to the board on a specific matter. Fees and costs of such counsel shall be paid from the Regulatory Trust Fund of the Department of Banking and Finance.

Section 5. Subsection (4) of section 497.131, Florida Statutes, is amended to read:

497.131 Disciplinary proceedings.—

(4) The determination as to whether probable cause exists shall be made by majority vote of the probable cause panel of the board. The board shall provide, by rule, that the determination of probable cause shall be made by a panel of its members or by the department. The board may provide, by rule, for multiple probable cause panels composed of at least two members. The board may provide, by rule, that one or more members of the panel or panels may be a former board member. The length of term or repetition of service of any such former board member on a probable cause panel may vary according to the direction of the board when authorized by board rule. Any probable cause panel must include one of the board's former or present consumer members, if one is available, willing to serve, and is authorized to do so by the board chair. Any probable cause panel must include a present board member. Any probable cause panel must include a former or present professional board member. However, any former professional board member serving on the probable cause panel must hold an active valid license for that profession. All probable cause proceedings conducted pursuant to the provisions of this section are exempt from the provisions of s. 286.011 and

s. 24(b), Art. I of the State Constitution. The probable cause panel may make a reasonable request, and upon such request the department shall provide such additional investigative information as is necessary to the determination of probable cause. A request for additional investigative information shall be made within 15 days from the date of receipt by the probable cause panel of the investigative report of the department. The probable cause panel shall make its determination of probable cause within 30 days after receipt by it of the final investigative report of the department. The Comptroller may grant extensions of the 15-day and the 30-day time limits. If the probable cause panel does not find probable cause within the 30-day time limit, as may be extended, or if the probable cause panel finds no probable cause, the department may determine, within 10 days after the panel fails to determine probable cause or 10 days after the time limit has elapsed, that probable cause exists. If the probable cause panel finds that probable cause exists, it shall direct the department to file a formal complaint against the licensee. The department shall follow the directions of the probable cause panel regarding the filing of a formal complaint. If directed to do so, the department shall file a formal complaint against the subject of the investigation and prosecute that complaint pursuant to the provisions of chapter 120. However, the department may decide not to prosecute the complaint if it finds that probable cause had been improvidently found by the panel. In such cases, the department shall refer the matter to the board. The board may then file a formal complaint and prosecute the complaint pursuant to the provisions of chapter 120. The department shall also refer to the board any investigation or disciplinary proceeding not before the Division of Administrative Hearings pursuant to chapter 120 or otherwise completed by the department within 1 year after the filing of a complaint. A probable cause panel or the board may retain independent legal counsel, employ investigators, and continue the investigation as it deems necessary; all costs thereof shall be paid from the department's Regulatory Trust Fund. All proceedings of the probable cause panel shall be exempt from the provisions of s. 120.525.

Section 6. Subsection (1) of section 497.213, Florida Statutes, is amended to read:

497.213 Annual license fees.—

(1) The department shall collect from each cemetery company operating under the provisions of this chapter an annual license fee as follows:

- (a) For a cemetery with less than \$25,000 annual gross sales . . . \$250.
- (b) For a cemetery with at least \$25,000 but less than \$100,000 annual gross sales . . . . . \$350.
- (c) For a cemetery with annual gross sales of at least \$100,000 but less than \$250,000 . . . . . \$600.
- (d) For a cemetery with annual gross sales of at least \$250,000 but less than \$500,000 . . . . . \$900.

- (e) For a cemetery with annual gross sales of at least \$500,000 but less than \$750,000 . . . . . \$1,350.
- (f) For a cemetery with annual gross sales of at least \$750,000 but less than \$1,000,000 . . . . . \$2,250 ~~\$1,750~~.
- (g) For a cemetery with annual gross sales of at least \$1,000,000 but less than \$5,000,000 ~~or more~~ . . . . . \$3,250 ~~\$2,650~~.
- (h) For a cemetery with annual gross sales of \$5,000,000 or more . . . . . \$4,900.

Section 7. Subsection (2) of section 497.245, Florida Statutes, is amended to read:

497.245 Care and maintenance trust fund, percentage of payments for burial rights to be deposited.—

(2) Deposits to the care and maintenance trust fund shall be made by the cemetery company not later than 30 days following the close of the calendar month in which any payment was received; however, when such payments are received in installments, the percentage of the installment payment placed in trust must be identical to the percentage which the payment received bears to the total cost for the burial rights. Trust income may be used to pay for all usual and customary services for the operation of a trust account, including, but not limited to: reasonable trustee and custodian fees, investment adviser fees, allocation fees, and taxes, and annual examination fees. If the net income is not sufficient to pay the fees and other expenses, the fees and other expenses shall be paid by the cemetery company. Capital gains taxes shall be paid from the corpus.

Section 8. Subsection (1) of section 497.341, Florida Statutes, is amended to read:

497.341 Burial without regard to race or color.—

(1) No cemetery company or other legal entity conducting or maintaining any public or private cemetery may deny burial space to any person because of race or color. A cemetery company or other entity operating any cemetery may designate parts of cemeteries or burial grounds for the specific use of persons whose religious code requires isolation. Religious institution Church cemeteries may limit burials to ~~church~~ members of the religious institution and their families.

Section 9. Subsection (4) of section 497.405, Florida Statutes, is amended to read:

497.405 Certificate of authority required.—

(4) The provisions of this section do not apply to religious-institution-owned church-owned cemeteries exempt under s. 497.003(1)(d), in counties with a population of at least 960,000 persons on July 1, 1996, with respect to the sale to the religious institution's ~~church's~~ members and their families of interment rights, mausoleums, crypts, cremation niches, vaults, liners,

urns, memorials, vases, foundations, memorial bases, floral arrangements, monuments, markers, engraving, and the opening and closing of interment rights, mausoleums, crypts and cremation niches, if such cemeteries have engaged in the sale of preneed contracts prior to October 1, 1993, and maintain a positive net worth at the end of each fiscal year of the cemetery.

Section 10. Subsections (4), (9), and (12) of section 497.407, Florida Statutes, are amended to read:

497.407 Certificate of authority; annual statement; renewal; transfer.—

(4)(a) An application to the board for an initial certificate of authority shall be accompanied by an application fee of \$500. Thereafter, each annual application for renewal of a certificate of authority shall be accompanied by the appropriate fee as follows:

- 1. For a certificateholder with no preneed contract sales during the immediately preceding year . . . . . \$300.
- 2. For a certificateholder with at least 1 but fewer than 50 preneed contract sales during the immediately preceding year . . . . . \$400.
- 3. For a certificateholder with at least 50 but fewer than 250 preneed contract sales during the immediately preceding year . . . . . \$500.
- 4. For a certificateholder with at least 250 but fewer than 1,000 preneed contract sales during the immediately preceding year . . . . . \$850.
- 5. For a certificateholder with at least 1,000 but fewer than 2,500 preneed contract sales during the immediately preceding year . . . . . \$1,500.
- 6. For a certificateholder with at least 2,500 but fewer than 5,000 preneed contract sales during the immediately preceding year . . . . . \$2,500.
- 7. For a certificateholder with at least 5,000 but fewer than 15,000 preneed contract sales during the immediately preceding year . . . . . \$6,000.
- 8. For a certificateholder with at least 15,000 but fewer than 30,000 preneed contract sales during the immediately preceding year . . . . . \$12,500.
- 9. For a certificateholder with 30,000 preneed contract sales or more during the immediately preceding year . . . . . \$18,500.

~~(b) The fee payable to the department for issuance of the original certificate of authority and each annual renewal thereof shall be set by the board at an amount not to exceed \$500 and shall accompany each application for an original certificate and, thereafter, each annual statement. Any person or entity that is part of a common business enterprise that has a certificate of authority issued pursuant to this section and elects to operate under a name other than that of the common business enterprise shall submit an application on a form adopted by the board to become a branch registrant. Upon the approval of the board that such entity qualifies to sell preneed contracts under this chapter except for the requirements of subparagraph~~

(2)(c)1. and if the certificateholder meets the requirements of such subparagraph, a branch registration shall be issued. Each branch registrant may operate under the certificate of authority of the common business enterprise upon the payment of a fee established by the board not to exceed \$150 ~~\$100~~ accompanying the application on April 1 annually. The fee shall be payable to the department's Regulatory Trust Fund ~~under the department~~.

(9) In addition to any other penalty that may be provided for under this chapter, the board may levy a fine not to exceed \$50 a day for each day the certificateholder fails to file its annual statement, and the board may levy a fine not to exceed \$50 a day for each day the certificateholder fails to file the statement of activities of the trust. Upon notice to the certificateholder by the board that the certificateholder has failed to file the annual statement or the statement of activities of the trust, the certificateholder's authority to sell preneed contracts shall cease while such default continues. The board shall deposit all sums collected under this section to the credit of the department's Regulatory Trust Fund ~~under the department~~.

(12) Each certificateholder shall pay to the department's Regulatory Trust Fund ~~under the department~~ an amount established by the board not to exceed \$10 ~~\$5~~ for each preneed contract entered into. This amount must be paid within 60 days after the end of each quarter. These funds must be used to defray the cost of the board and the department in administering the provisions of this chapter.

Section 11. Section 497.431, Florida Statutes, is amended to read:

497.431 Examinations and investigations.—The department shall, as often as it may deem necessary but at least once every 3 years, examine the business of any person writing preneed contracts and any guaranteeing organization existing under this chapter to the extent applicable. The examination shall be ~~at the expense of the person or organization examined as provided in this section and shall be made by the designated representatives or examiners representative or examiner~~ representative or examiner of the department. The written report of each such examination, when completed, shall be filed in the office of the board and, when so filed, shall constitute a public record. Any such person or organization being examined shall produce, upon request, all records of the company or organization. The designated representative of the board may at any time examine the records and affairs of any such person or organization, whether in connection with a formal examination or not. The board may waive the examination requirements of this section if the certificateholder or guaranteeing organization submits audited financial statements. ~~The department may charge an examination fee prescribed by rule, but such fee may not exceed \$300 per 8-hour day for each examiner. Such examination fee shall be calculated on an hourly basis and shall be rounded to the nearest hour. The person or organization examined~~ For out-of-state travel, the licensee shall also pay the travel expense and per diem subsistence allowance provided for state employees under s. 112.061 for out-of-state travel incurred by department representatives or examiners in connection with an examination. The department shall be entitled to recover the reasonable and justifiable costs of investigation if the investigation results in judicial or administrative disciplinary action.

Section 12. Subsection (3) of section 497.435, Florida Statutes, is amended to read:

497.435 Administrative fine in lieu of revocation or suspension of certificate of authority.—

(3) The fine shall be deposited into the department's Regulatory Trust Fund ~~under the department~~.

Section 13. Subsection (7) of section 497.439, Florida Statutes, is amended to read:

497.439 Preneed sales agents.—

(7) An application for registration as a preneed sales agent shall be submitted to the department with an application fee of \$100 ~~by certified mail, return receipt requested,~~ by the certificateholder ~~in~~ on a form that has been prescribed by department rule and approved by the board. Such application ~~and~~ shall contain, at a minimum, the following:

(a) The name, address, social security number, and date of birth of the applicant and such other information as the board may reasonably require of the applicant.

(b) The name, address, and license number of the sponsoring certificateholder.

(c) A representation, signed by the applicant, that the applicant meets the requirements set forth in subsection (6).

(d) A representation, signed by the certificateholder, that the applicant is authorized to offer, sell, and sign preneed contracts on behalf of the certificateholder, and that the certificateholder has trained the applicant in the provisions of this chapter relating to preneed sales as determined by the board, the provisions of the certificateholder's preneed contract, and the nature of the merchandise, services, or burial rights sold by the certificateholder.

(e) A statement indicating whether the applicant has any type of working relationship with any other certificateholder or insurance company.

Section 14. This act shall take effect July 1, 2000.

Approved by the Governor June 5, 2000.

Filed in Office Secretary of State June 5, 2000.