

## Council Substitute for House Bill No. 1177

An act relating to funeral and cemetery industry regulation; amending s. 497.101, F.S.; conforming a reference; amending s. 497.141, F.S.; prohibiting certain persons from conducting, maintaining, managing, owning, or operating licensees under ch. 479; providing an exception; amending s. 497.143, F.S.; revising regulation and practice of limited licensees; amending s. 497.162, F.S.; providing for study courses using the Internet to fulfill continuing education requirements; amending s. 497.260, F.S.; requiring that a provision relating to the installation of monuments applies to all cemeteries in the state; amending s. 497.271, F.S.; revising a reference to a building code in which standards for newly constructed and significantly altered or renovated mausoleums and columbaria may be included; requiring that certain mausoleums contain pressure relief ventilation; amending s. 497.273, F.S.; providing for interment or entombment of a decedent with the remains of the decedent's pet; amending s. 497.367, F.S.; revising the frequency with which licensed funeral directors and embalmers are required to complete a continuing education course on HIV and AIDS; amending s. 497.374, F.S.; revising qualifications for licensure by endorsement for funeral directors; amending s. 497.550, F.S.; replacing the term "monument dealer" with "monument retailer"; creating s. 497.609, F.S.; providing freedom from liability for direct disposers, direct disposal establishments, funeral directors, funeral establishments, and cinerator facilities performing cremation under certain circumstances; amending s. 553.36, F.S.; providing definitions; amending ss. 316.515 and 627.702, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsection (3) of section 497.101, Florida Statutes, is amended to read:

497.101 Board of Funeral, Cemetery, and Consumer Services; membership; appointment; terms.—

(3) Board members shall be appointed for terms of 4 years, and the State Health Officer shall serve as long as that person holds that office. The designee of the State Health Officer shall serve at the pleasure of the Governor. When the terms of the initial board members expire, the Chief Financial Officer shall stagger the terms of the successor members as follows: one funeral director, one cemetery representative, the monument builder dealer, and one consumer member shall be appointed for terms of 2 years, and the remaining members shall be appointed for terms of 4 years. All subsequent terms shall be for 4 years.

Section 2. Paragraphs (e), (f), and (g) of subsection (12) of section 497.141, Florida Statutes, are redesignated as paragraphs (f), (g), and (h), respectively, and a new paragraph (e) is added to that subsection, to read:

497.141 Licensing; general application procedures.—

(12)

(e)1. It is unlawful for any person regulated under chapter 395, chapter 400, or chapter 429, 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.

2. 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 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.

Section 3. Section 497.143, Florida Statutes, is amended to read:

497.143 Licensing; limited licenses for retired professionals.—

(1) It is the intent of the Legislature that, absent a threat to the health, safety, and welfare of the public, the use of retired professionals in good standing to serve ~~the indigent, underserved, or critical need populations of~~ this state during times of critical need should be encouraged. To that end, rules may be adopted to permit practice by retired professionals as limited licensees under this section.

(2) For purposes of this section, the term “critical need” means an executive order from the Governor or a federal order declaring a state of emergency in an area.

~~(3)~~(2) Any person desiring to obtain a limited license, when permitted by rule, shall submit to the department an application and fee, not to exceed \$300, and an affidavit stating that the applicant 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. The affidavit shall also state that the applicant has retired ~~or intends to retire~~ from the practice of that profession and intends to practice only pursuant to the restrictions of the limited license granted pursuant to this section. If the applicant for a limited license submits a notarized statement from the employer stating that the applicant will not receive monetary compensation for any service involving the practice of her or his profession, ~~the application and all licensure fees shall be waived.~~ In no event may a person holding a limited license under this section engage in preneed sales under such limited license.

~~(4)~~(3) Limited licensure may be denied to an applicant who has committed, or is under investigation or prosecution for, any act which would constitute the basis for discipline under this chapter.

~~(5)~~(4) ~~The recipient of a limited license may practice only in the employ of public agencies or institutions or nonprofit agencies or institutions which~~

~~meet the requirements of 26 U.S.C. 501(c)(3) of the Internal Revenue Code and which provide professional liability coverage for acts or omissions of the limited licensee. A limited licensee may provide services only during times of to the indigent, underserved, or critical need populations within the state. The standard for determining indigency shall be that recognized by the Federal Poverty Income Guidelines produced by the United States Department of Health and Human Services. Rules may be adopted to define underserved and critical need areas and to ensure implementation of this section.~~

~~(6)(5)~~ The department may provide by rule for supervision of limited licensees to protect the health, safety, and welfare of the public.

~~(7)(6)~~ Each applicant granted a limited license is subject to all the provisions of this chapter under which the limited license is issued which are not in conflict with this section.

(8) All limited licensees shall work for an entity licensed under this chapter.

Section 4. Section 497.162, Florida Statutes, is amended to read:

497.162 Health and safety education.—All individuals not licensed under this chapter who intend to be employed as operational personnel affiliated with a direct disposal establishment, cinerator facility, removal service, refrigeration facility, or centralized embalming facility, as well as all nonlicensed 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 shall complete one course approved by the licensing authority 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 chapter. The course shall not exceed 3 hours and shall be offered at approved locations throughout the state. Such locations may include establishments that are licensed under this chapter. The licensing authority shall adopt rules to implement and enforce this provision, which rules shall include provisions that provide for the use of approved videocassette courses and other types of audio, video, Internet, or home study courses to fulfill the continuing education requirements of this section.

Section 5. Subsection (2) of section 497.260, Florida Statutes, is amended to read:

497.260 Cemeteries; exemption; investigation and mediation.—

(2) Section 497.276(1) as to burial records, and ss. 497.152(1)(d), 497.164, 497.2765, 497.278, 497.280, and 497.284 apply to all cemeteries in this state.

Section 6. Paragraph (c) of subsection (2) of section 497.271, Florida Statutes, is amended to read:

497.271 Standards for construction and significant alteration or renovation of mausoleums and columbaria.—

(2) The licensing authority shall adopt, by no later than July 1, 1999, rules establishing minimum standards for all newly constructed and significantly altered or renovated mausoleums and columbaria; however, in the case of significant alterations or renovations to existing structures, the rules shall apply only, when physically feasible, to the newly altered or renovated portion of such structures, except as specified in subsection (4). In developing and adopting such rules, the licensing authority may define different classes of structures or construction standards, and may provide for different rules to apply to each of said classes, if the designation of classes and the application of different rules is in the public interest and is supported by findings by the licensing authority based on evidence of industry practices, economic and physical feasibility, location, or intended uses; provided, that the rules shall provide minimum standards applicable to all construction. For example, and without limiting the generality of the foregoing, the licensing authority may determine that a small single-story ground level mausoleum does not require the same level of construction standards that a large multistory mausoleum might require; or that a mausoleum located in a low-lying area subject to frequent flooding or hurricane threats might require different standards than one located on high ground in an area not subject to frequent severe weather threats. The licensing authority shall develop the rules in cooperation with, and with technical assistance from, the Florida Building Commission of the Department of Community Affairs, to ensure that the rules are in the proper form and content to be included as part of the Florida Building Code State Minimum Building Codes under part ~~IV~~ VII of chapter 553. If the Florida Building Commission advises that some of the standards proposed by the licensing authority are not appropriate for inclusion in such building codes, the licensing authority may choose to include those standards in a distinct chapter of its rules entitled “Non-Building-Code Standards for Mausoleums” or “Additional Standards for Mausoleums,” or other terminology to that effect. If the licensing authority elects to divide the standards into two or more chapters, all such rules shall be binding on licensees and others subject to the jurisdiction of the licensing authority, but only the chapter containing provisions appropriate for building codes shall be transmitted to the Florida Building Commission pursuant to subsection (3). Such rules may be in the form of standards for design and construction; methods, materials, and specifications for construction; or other mechanisms. Such rules shall encompass, at a minimum, the following standards:

(c) Such structure must contain adequate provision for drainage and ventilation. Private or family mausoleums with all crypts bordering an exterior wall must contain pressure relief ventilation from the crypts to the outside of the mausoleum through the exterior wall or roof.

Section 7. Subsection (4) is added to section 497.273, Florida Statutes, to read:

497.273 Cemetery companies; authorized functions.—

(4) This chapter 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 if:

(a) The human remains or cremated human remains are not commingled with the inurned cremated animal remains; and

(b) The interment or entombment with the inurned cremated animal remains is with the authorization of the decedent or other legally authorized person.

Section 8. Subsection (1) of section 497.367, Florida Statutes, is amended to read:

497.367 Instruction on HIV and AIDS, funeral directors and embalmers.—

(1) Each person licensed as a funeral director or embalmer under this chapter shall be required to complete an approved continuing educational course on human immunodeficiency virus and acquired immune deficiency syndrome as a prerequisite for every third biennial licensure renewal at least every 2 years. The course shall consist of education on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome. Such course shall include information on current Florida law on acquired immune deficiency syndrome and its impact on testing, confidentiality of test results, and treatment of patients.

Section 9. Paragraph (b) of subsection (1) of section 497.374, Florida Statutes, is amended to read:

497.374 Funeral directing; licensure as a funeral director by endorsement; licensure of a temporary funeral director.—

(1) The licensing authority shall issue a license by endorsement to practice funeral directing to an applicant who has remitted a fee set by rule of the licensing authority not to exceed \$200 and who:

(b)1. Holds a valid license to practice funeral directing in another state of the United States, provided that, when the applicant secured her or his original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in this state; or

2. Meets the qualifications for licensure in s. 497.373 and has, ~~within 10 years prior to the date of application,~~ successfully completed a state, regional, or national examination in mortuary science, which, as determined by rule of the licensing authority, is substantially equivalent to or more stringent than the examination given by the licensing authority.

Section 10. Subsection (1) of section 497.550, Florida Statutes, is amended to read:

497.550 Licensure of monument establishments required; procedures and criteria.—

(1) LICENSE REQUIRED.—No person shall conduct, maintain, manage, or operate a monument establishment in this state unless the monument establishment is licensed pursuant to this part.

(a) The two categories of monument establishment licensure available in this state are:

1. Monument builder.
2. Monument retailer dealer.

(b) An applicant for licensure as a monument establishment shall designate on the application form the category of monument establishment licensure for which he or she is applying.

(c) Each monument establishment that is licensed under this chapter at 11:59 p.m. on September 30, 2005, is, on and after October 1, 2005, licensed as a monument retailer dealer subject to the requirements of this chapter. A person who becomes licensed as a monument retailer dealer by operation of this paragraph may apply to the board for licensure as a monument builder and, upon payment of applicable application fees and the granting of such application and licensure as a monument builder, such person's licensure as a monument retailer dealer will expire.

(d) The requirements of this chapter apply to both monument retailer dealers and monument builders, except as provided in this paragraph. Each monument establishment shall be a physical structure that is located at a specific street address, in compliance with zoning regulations of the appropriate local government, and not located on property that is exempt from taxation, but a monument retailer dealer may not otherwise be required to comply with s. 497.552 or be subject to inspection under this chapter.

(e) A monument establishment that is not licensed under the monument-builder category is not eligible for a preneed sales license.

Section 11. Section 497.609, Florida Statutes, is created to read:

497.609 Liability of direct disposers, direct disposal establishments, funeral directors, funeral establishments, and cinerator facilities regarding cremation.—If a direct disposer, direct disposal establishment, funeral director, funeral establishment, or cinerator facility is given a copy of the deceased's declaration of intent to be cremated that is signed by the deceased and the deceased's human remains are subsequently cremated, or a court order directing the cremation of the deceased's human remains, no person may make a claim objecting to the cremation against that direct disposer, direct disposal establishment, funeral director, funeral establishment, or cinerator facility. If a direct disposer, direct disposal establishment, funeral director, funeral establishment, or cinerator facility performs a cremation pursuant to the authorization of a legally authorized person who 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, and the deceased's human remains are subsequently cremated, no person may make a claim objecting to the cremation against that direct disposer, direct disposal establishment, funeral director, funeral establishment, or cinerator facility.

Section 12. Subsections (5) through (14) of section 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 13. Subsection (14) of section 316.515, Florida Statutes, is amended to read:

316.515 Maximum width, height, length.—

(14) MANUFACTURED BUILDINGS.—The Department of Transportation may, in its discretion and upon application and good cause shown therefor that the same is not contrary to the public interest, issue a special permit for truck tractor-semitrailer combinations where the total number of overwidth deliveries of manufactured buildings, as defined in s. 553.36(13)(12), may be reduced by permitting the use of an overlength trailer of no more than 54 feet.

Section 14. Paragraph (a) of subsection (1) and subsection (5) of section 627.702, Florida Statutes, are amended to read:

627.702 Valued policy law.—

(1)(a) In the event of the total loss of any building, structure, mobile home as defined in s. 320.01(2), or manufactured building as defined in s. 553.36(13)(12), located in this state and insured by any insurer as to a covered peril, in the absence of any change increasing the risk without the insurer's consent and in the absence of fraudulent or criminal fault on the part of the insured or one acting in her or his behalf, the insurer's liability under the policy for such total loss, if caused by a covered peril, shall be in the amount of money for which such property was so insured as specified in the policy and for which a premium has been charged and paid.

(5) This section does not apply as to personal property or any interest therein, except with respect to mobile homes as defined in s. 320.01(2) or manufactured buildings as defined in s. 553.36(13)(12). Nor does this section apply to coverage of an appurtenant structure or other structure or any coverage or claim in which the dollar amount of coverage available as to the structure involved is not directly stated in the policy as a dollar amount specifically applicable to that particular structure.

Section 15. This act shall take effect July 1, 2007.

Approved by the Governor May 22, 2007.

Filed in Office Secretary of State May 22, 2007.