

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility: 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.

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, 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 395¹, chapter 400², or chapter 429³, 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 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.

¹ Hospital Licensing And Regulation

² Nursing Homes And Related Health Care Facilities

³ Assisted Care Communities

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 professionals to times of critical need. The bill defines the term “critical need” for purposes of the section.

This type of licensure is triggered by the issuance of an Executive Order from the Governor, director of Division of Emergency Management, Florida Emergency Mortuary Operations Response System, district medical examiner, or activation of a state continuity of operations plan.

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

Currently, non-licensed personnel who are involved in the removal or transportation of human remains must complete a course on communicable disease within 10 days of being hired. This bill requires the same course to also be repeated at least once every 6 years.

Sections 5-7, of the bill provide amendments 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 to 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.

Section 6: This section requires 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.

Section 7: The bill requires continuing education training be repeated once every 6 years. Currently, continuing education training is required every 2 years for license renewal. The training has remained consistent over the past years and new information is not being presented.

Section 8, of the bill provides amendments to Part III, Chapter 497, F.S., Funeral Directing, Embalming, and Related Services.

Section 8: The bill amends s. 497.367, F.S., relating to Instruction on HIV and AIDS, funeral directors and embalmers.—

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.

Section 9, of the bill provides amendments to Part V, Chapter 497, F.S., Monument Establishments.

Section 9: This section makes conforming changes. The term "monument dealer" is amended to "monument retailer."

Section 10, of the bill provides amendments to Part VI, Chapter 497, F.S., Cremation, Crematories, and Direct Disposition.

Section 10: 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.

Sections 11,13-14, of the bill provide amendments make conforming changes and correct cross references.

Section 11: Definitions for the terms "columbarium" and "private mausoleum" are added to s. 553.36, F.S. These definitions conform to those in Chapter 497.

Section 12: The bill amends s.12: 553.73, F.S., relating to Florida Building Code.-- This section exempts prefabricated columbaria and private mausoleums from the Code.

Section 13: Corrects cross-reference.

Section 14: Corrects cross-reference.

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: This section requires private or family mausoleums to have certain ventilation.

Section 7: The bill requires continuing education training be repeated once every six years for certain license renewals.

Section 8: The bill amends s. 497.367, F.S., relating to Instruction on HIV and AIDS, funeral directors and embalmers.

Section 9: This section makes conforming changes. The term "monument dealer" is amended to "monument retailer."

Section 10: The bill provides amendments to Part VI, Chapter 497, F.S., Cremation, Crematories, and Direct Disposition (liability).

Section 11: Conforming definitions for the terms "columbarium" and "private mausoleum."

Section 12: The bill amends s.12: 553.73, F.S., to exempt prefabricated columbaria and private mausoleums from the Florida Building Code.

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