

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1177 Funeral and Cemetery Industry Regulation  
**SPONSOR(S):** Jobs & Entrepreneurship Council and Weatherford and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2856

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Financial Institutions</u>	<u>6 Y, 0 N</u>	<u>Holt</u>	<u>Haug</u>
2) <u>Jobs &amp; Entrepreneurship Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Holt</u>	<u>Thorn</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The bill addresses funeral and cemetery industry regulation. In general, the bill conditionally prohibits individuals that are regulated or licensed under laws related to hospitals, nursing homes, or assisted care communities from involvement with organizations or corporations, that are regulated or licensed under Funeral, Cemetery & Consumer Services law. It revises regulation and practices of limited licensure for certain retired funeral and embalmer professionals; revises rulemaking provisions to allow for Internet use relating to the fulfillment of continuing education for non-licensed personnel. The bill further revises the frequency with which licensed funeral directors and embalmers are required to complete continuing education courses on HIV/AIDS. Under certain circumstances, the bill limits the liability exposure for direct disposal establishments, funeral directors, funeral establishments, and cinerator facilities that perform cremation. The bill also replaces terms and makes conforming changes. Exemptions to the Florida Building Code are also included for certain structures.

The fiscal impact appears to be minimal.

This act takes effect July 1, 2007.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility: The bill creates s. 497.609, F.S. to provided 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 the Board of Funeral, Cemetery, and Consumer Services; membership; appointment; terms.—

The bill replaces the term “monument dealer” with “monument builder” in conformance with s. 497.101(2)

Section 2: The bill amends s. 497.141(12), F.S., relating to licensing; general application procedures.—

The bill adds paragraph (e) to the section to read:

(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.

Currently, there is no specific restriction to owning a license under chapter 497, F.S., Funeral, Cemetery & Consumer Services. However, the new paragraph is intended to prohibit 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 was to open or acquire a funeral establishment, it would be very difficult to enforce at-need solicitation<sup>1</sup>; because, these establishments are intricately involved in the health care profession. That would leave proving the use of undue influence by these entities complex to determine.

The bill also provides that paragraph (e) does not apply to a board member of a corporation or organization regulated under chapter 395<sup>2</sup>, chapter 400<sup>3</sup>, or chapter 429<sup>4</sup>. This exception applies if the board member: 1) serves solely in a voluntary capacity, 2) does not regularly take part in the day-to-day operational decisions of the corporation or organization, 3) receives no remuneration for his or her services, 4) has no personal financial interest, and has no family members with a financial interest, in the corporation or organization.

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<sup>1</sup> “At-need solicitation” means 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.

<sup>2</sup> Hospital Licensing And Regulation

<sup>3</sup> Nursing Homes And Related Health Care Facilities

<sup>4</sup> Assisted Care Communities

Section 3: The bill amends s. 497.143, F.S., relating to licensing; limited licenses for retired professionals.—

Currently, the statute authorizes licensure for retired funeral and embalmer 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 as licensed funeral directors and embalmers. The change amends when licenses can be issued to these retired individuals, and that would be only when a critical need occurs. The bill defines the term “critical need” for purposes of the section.

Critical need for this section means the issuance of an Executive Order from the Governor or a Federal order declaring a state of emergency in an area. All such limited licensees shall work for an entity licensed under ch. 497, F.S.

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

This section is amended to allow for Internet use in the rulemaking provisions relating to the fulfillment of continuing education for non-licensed personnel.

**Sections 5-6, 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 that regulations pertaining to monument installation apply to all cemeteries in the state. Currently, these regulations only apply to licensed cemeteries. Unfortunately, there is no data base which contains the location of all non-licensed cemeteries, so enforcement presents a challenge for DFS. However, these types of non-licensed cemeteries become known to DFS when a consumer complaint is filed.

Section 6: The bill amends s. 497.271, F.S., relating to standards for construction and significant alteration or renovation of mausoleums and columbaria.—

This bill requires that 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.

**Sections 7-8, of the bill provide amendments to Part III, Chapter 497, F.S., Funeral Directing, Embalming, and Related Services**

Section 7: The bill amends s. 497.367, F.S., relating to instruction on HIV and AIDS, funeral directors and embalmers.—

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

Section 8: The bill amends s. 497.374, F.S., relating to funeral directing; licensure as a funeral director by endorsement; licensure of a temporary funeral director.—

Through DFS information, 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 prior 10 years. The bill eliminates the 10 year time constraint and only requires the applicant to have successfully passed the national examination.

**Section 9, of the bill provides amendment to Part V, Chapter 497, F.S., Monument Establishment**

Section 9: The bill amends s. 497.550, F.S., to replace the term "monument dealer" with "monument retailer."

### **Section 10, amends Part VI, Chapter 497, Cremation, Crematories, and Direct Disposition**

Section 10: Currently, a person cannot authorize his or her own cremation, according to information provided by DFS. The bill creates s. 497.609, F.S. to provide that a funeral director, direct disposer, funeral establishment, direct disposal establishment or a cinerator facility may accept a deceased's declaration of intent to be cremated if it is signed by the deceased prior to death as definitive authorization to cremate. Through this provision, it is intended that a funeral professional cannot be subject to a claim by anyone who objects to the signed declaration of intent to cremate.

### **Sections 11-12, amend Part IV, Chapter 553, Building Construction Standards**

Section 11: The bill amends s. 553.36, F.S., relating to manufactured buildings. Subsections (5) through (14) of the section 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 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 12: The bill amends s. 553.73, F.S., relating to the Florida Building Code

This section exempts from the Building Code prefabricated or pre-assembled columbaria and prefabricated or pre-assembled private mausoleums that are not a walk-in type.

Section 13: Corrects cross-reference.

Section 14: Corrects cross-reference.

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

### **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: The bill amends s. 497.271, F.S., relating to standards for construction and significant alteration or renovation of mausoleums and columbaria.—

Section 7: The bill amends s. 497.367, F.S., relating to Instruction on HIV and AIDS, funeral directors and embalmers.

Section 8: The bill amends s. 497.374, F.S., relating to funeral directing; licensure as a funeral director by endorsement; licensure of a temporary funeral director.

Section 9: The bill amends s. 497.550, F.S., to replace the term "monument dealer" with "monument retailer."

Section 10: The bill creates s. 497.609, F.S. to provided that a funeral director, direct disposer, funeral establishment, direct disposal establishment or a cinerator facility may accept a deceased's declaration of intent to be cremated if it is signed by the deceased prior to death as definitive authorization to cremate.

Section 11: The bill renumbers sections. It further defines the terms "columbarium" and "private mausoleum."

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

Section 13: The bill corrects a cross-reference.

Section 14: The bill corrects a cross-reference.

Section 15: Provides effective date.

## 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

On March 22, 2007, the Financial Institutions Committee adopted six amendments in summation as follows:

- Amendment 1: For purposes of s.497.143, F.S., defines the term "critical need"
- Amendment 2: Returns to current practice approved course requirement for non-licensed personnel.
- Amendment 3: Allows for use of the Internet in the provisions relating to rulemaking and non-licensed personnel fulfillment of continuing education.
- Amendment 4: Removes section 6 relating to cemeteries; exemption; investigation and mediation.
- Amendment 5: Defines the term "columbarium."
- Amendment 6: Defines the term "private mausoleum."

On March 29, 2007, the Job & Entrepreneurship Council adopted seven amendments in summation as follows:

- Amendment 1: Replaces the term "monument dealer" with "monument builder" in conformance with in 497.101(2).
- Amendment 2: A license may be issued to certain retired funeral-related individuals when a critical need occurs. The bill defines the term "critical need" for purposes of the section.
- Amendment 3: Restores current language related to non-licensed individuals who remove or transport human remains on behalf of a funeral or direct disposal establishment.
- Amendment 4: Allows for use of the Internet in the provision relating to rulemaking and non-licensed personnel fulfillment of continuing education.
- Sub-Amend 5: Re-inserts section 6 or the originally filed bill relating to ventilation in mausoleums.
- Amendment 6: Defines the term "columbarium."
- Amendment 7: Defines the term "private mausoleum."