

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 527 Florida Funeral, Cemetery, and Consumer Services Act

SPONSOR(S): Roberson and others

TIED BILLS: IDEN./SIM. BILLS: SB 1152

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Insurance, Business & Financial Affairs Policy Committee, Vickroy, Cooper.

SUMMARY ANALYSIS

Current law provides for the classifications of funeral director only, embalmer only, and combination funeral director and embalmer license. Persons wishing to obtain a funeral director only license must take courses in funeral service arts and mortuary science, the same courses required for combination licenses. Mortuary science courses are required for learning the process of embalming which funeral director only licensees are not permitted to practice. The bill allows for persons wishing to obtain a funeral director only license to take only the funeral service arts courses. This may encourage more individuals to enter the profession as they may not have an interest in learning to embalm dead bodies, but may be attracted to the personal interaction aspect of the industry.

Once an applicant for a funeral director only or combination license completes the required coursework, he or she must then complete a one-year internship under the direct supervision of a licensed funeral director, as well as pass the state and federal laws and rules exam related to the disposition of dead human bodies, and the National Board Examination. The bill would allow applicants who currently hold an associate's degree or higher who are currently enrolled in required coursework and have passed a course in mortuary law to begin their internships. It would also allow for the renewal of the internship for an additional year if the applicant meets certain requirements. Furthermore, the bill would allow interns who have met certain requirements to complete their internships under general supervision. This may be attractive to individuals who may desire to continue working part-time while completing their coursework and may allow interns to receive a higher wage as general supervision would likely increase their value to the funeral establishment.

Current law allows either a direct disposer or funeral director to serve as the direct disposer in charge of a direct disposal establishment. The bill would require a funeral director to serve as the direct disposer in charge. However, there would be a grandfather provision to allow direct disposers currently serving as direct disposers in charge to continue to do so provided they meet certain requirements. This may discourage persons from obtaining a direct disposer license as they will not be able to serve as the direct disposer in charge of a direct disposer establishment.

Current law allows either a funeral director only licensee or combination licensee to serve as the full-time funeral director in charge (FDIC) of a licensed funeral establishment. The bill would require the full-time FDIC to have a combination license. However, there would be a grandfather provision to allow current funeral director only licensees to continue to serve as the full-time FDIC. Especially if the educational provisions of the bill become law, this may be an important requirement as funeral director only licensees will not have any mortuary science background, and funeral establishments practice embalming.

The bill provides for the certain waivers and modifications of ch. 497 in the event of a public emergency. It also modifies some of the health and safety education requirements for licensees, as well as some of the preneed contract provisions. Finally, the bill allows cemeteries to require monument establishments to provide proof of liability as required by law, but prohibits cemeteries from specifying a certain additional amount of insurance, or requiring the monument establishment to obtain a bond.

The bill may have a positive impact on job creation in the funeral directing profession, but may also have a negative impact on the direct disposer profession. It would likely have no fiscal impact on state government beyond the cost of rulemaking and a small increase in revenues generated from additional inspection fees.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 2/8/2010

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Education for Funeral Director Only License (Section 16)

Current Situation

For persons wishing to enter the funeral directing profession, three licenses are relevant: funeral director only licenses, embalmer only licenses, and combined funeral director and embalmer licenses. According to the Division of Funeral, Cemetery, and Consumer Services, (hereafter, the Division) there are 78 funeral director only licensees, 39 embalmer only licensees, and 2450 combined funeral director and embalmer licensees within the state of Florida.¹

Persons who wish to gain an embalmer only license must take approved courses in mortuary science,² complete a one-year internship, pass examinations relating to state and federal laws and rules relating to the disposition of dead human bodies, as well as pass the Funeral Services Science section of the National Board Examination prepared by the Conference of Funeral Service Examining Boards (CFSEB).³ These persons do not have to take courses in funeral service arts. Persons who wish to gain a combination license must meet the requirements for an embalmer's license listed above, as well as take approved courses in funeral service arts,⁴ and pass the Funeral Services Arts section of the National Board Examination prepared by the CFSEB.⁵

Similarly, persons wishing to gain a funeral director only license must take classes in both mortuary science and funeral service arts required for the combined funeral director and embalmer license, whether or not the student wishes to gain an embalming license or practice embalming. They must also complete a one-year internship,⁶ pass the state and federal laws and rules examination relating to the disposition of dead human bodies, and the Funeral Services Arts section of the National Board Examination.⁷ This may explain why so few funeral director only licenses exist in Florida; if people must take the required mortuary science courses regardless, they may be more inclined to take the Funeral Services Science section of the National Board Examination. However, some people may be

¹Division of Funeral, Cemetery & Consumer Services, Who the Board Regulates, http://www.myfloridacfo.com/funeralcemetery/fc_who_we_regulate.htm (last visited Jan. 20, 2010).

² Section 497.368(1)(d), F.S.

³ F.A.C. 69K-16.0001.

⁴ Section 497.373(1)(d)(1)-(2), F.S.

⁵ Section 497.376(1), F.S.

⁶ See Funeral Director Internship.

⁷ F.A.C. 69K-16.002.

discouraged from becoming funeral directors because of the mortuary science course requirement as they may enjoy working with families and counseling, but may dislike the science aspect of the industry.

Furthermore, cremation, rather than embalming and traditional burial, has begun to increase throughout Florida and the country.⁸ Approximately 50.47% of all dead bodies in the state of Florida are projected to be cremated this year.⁹ This exceeds the projected national average of 38.15%¹⁰ and represents an increasing percentage of all dead bodies.¹¹ Thus, the industry need for funeral directors to have the scientific background in embalming may be less important than it once was.

Finally, the oldest members of the Baby Boomer population will begin turning 65 in 2011. Florida already has the highest proportion over 65 citizens in the country with 19% of the total population.¹² As these members age and eventually die, the demand for funeral directors may increase.

Effect of Proposed Changes

The bill would not require individuals seeking a funeral director only license to take courses in mortuary science, and they would not be tested on mortuary science subjects, such as embalming. These individuals would still be required to take courses in funeral service arts, and pass the Funeral Services Arts section of the National Board Examination, as well as the state and federal laws and rules examination relating to the disposition of dead human bodies. Thus, individuals who may otherwise be discouraged from becoming funeral directors because of the required science education may be encouraged to become licensed funeral directors. This may have an impact on the overall number of licensed funeral directors in the future and accommodate the expected increase in total number of deaths in the state.

Funeral Director Internship (Section 1, 16, 17, 18)

Current Situation

There are two main ways to become a licensed funeral director. First, a person must first complete the required formal educational courses.¹³ These courses consist of at least sixty hours and up to ninety hours of semester course credit.¹⁴ Thus, the course work would likely take at least two years of fulltime study to complete. Upon completion of the coursework, a person must then complete a one-year internship under the direct supervision of a licensed funeral director,¹⁵ as well as pass the state and federal laws and rules examination relating to the disposition of dead human bodies and the National Board Examination.¹⁶ Unless illness or personal injury prevents him or her, an intern must complete the internship within the year, or else he or she must pay an additional fee and repeat the entire internship.¹⁷ According to Division rule, direct supervision means that the supervising funeral director must be physically present or on the premises at all times while the intern is performing services, and the licensed funeral director must provide both initial direction, as well as periodic inspection of arrangements.¹⁸

⁸ Don Conkey, *As Cremations Rise, So Do Options on Where to Spend*, available at: <http://www.cremationassociation.org> (last visited Jan. 25, 2010).

⁹ U.S. Cremation Statistics, <http://www.nfda.org/consumer-resources-cremation/78-us-cremation-statistics.html> (last visited Jan 20, 2010).

¹⁰ *Id.*

¹¹ Florida Funeral Home Statistics – 1998 through 2008, Funeral Industry Consultants, Inc., 717 (2008).

¹² Frank B. Hobbs, *The Elderly Population*, U.S. Bureau of Statistics, available at: <http://www.census.gov/population/www/pop-profile/elderpop.html> (last visited Jan. 25, 2010).

¹³ F.A.C. 69K-18.002(2).

¹⁴ F.A.C. 69K-15.002(1).

¹⁵ Section 497.375(1)(d), F.S.

¹⁶ Section 497.373(2), F.S.

¹⁷ F.A.C. 69K-18.002(5).

¹⁸ F.A.C. 69K-18.002(3).

Thus, through this method the entire process of becoming a licensed funeral director takes at least approximately three years during which the person will likely not be able to work while completing course work, and must be under the direct control at all times while completing the internship. This may be unattractive to individuals who are interested in funeral directing as second careers, but may not be able to afford to stop working for that amount of time.

The second method for becoming a licensed funeral director is by endorsement.¹⁹ Here, a person who is currently licensed as a funeral director in another state and who has successfully completed a state, regional, or national examination in mortuary science which is substantially equivalent or more stringent than the mortuary science examination required in Florida, may gain a license as a funeral director in Florida.²⁰ Thus, persons who hold licenses in other states who have only successfully completed a state, regional, or national examination in funeral service arts will not be eligible for a license by endorsement.

Effect of Proposed Changes

The bill would allow certain persons to begin their internships before the completion of formal education requirements. Persons currently enrolled in required funeral director courses who already hold an associate degree or higher in any field from a college or university accredited and recognized by the United States Department of Education and who have taken and passed a college credit course in mortuary or funeral service law and ethics may begin their internships. This may attract second career individuals, who otherwise may not have the financial capability to stop working to return to school.

The bill defines direct supervision to require the licensed funeral director to be physically present or on the premises while all tasks, functions, and duties relating to funeral directing are performed. The bill provides the same language for direct supervision of an embalmer intern by a licensed embalmer. It also defines general supervision to require the licensed funeral director to be reasonably available and in the position to provide direction and guidance by being physically present, on the premises, or available by telephone or other electronic communication while all tasks, functions, and duties relating to funeral directing are performed. The bill provides the same language for general supervision of an embalmer intern by a licensed embalmer.

The bill would allow funeral director interns who have graduated from an approved course of study in mortuary science or funeral service arts and passed the laws and rules examination to complete their internship under general supervision if the funeral director in charge of the funeral director internship agency certifies after six months of direct supervision that the intern is competent to complete the internship under general supervision. This may allow them to earn a higher wage for the remainder of their internship as they will be able to carry out more funeral directing functions without the licensed funeral director needing to be as directly involved in their tasks and functions.

Furthermore, the bill would allow funeral director interns who have been certified by the funeral director in charge of the funeral director training agency to have completed at least one half of the required coursework to renew their internship license. This would be attractive to people who began their internships prior to completing all course work under the proposed changes in section 16 of the bill. The bill would also allow the intern to renew his or her license if he or she can demonstrate that the failure to complete was due to illness, personal injury, or substantial hardship, or that he or she is waiting to take the National Board Examination. The licensing authority would be allowed to charge a nonrefundable fee for the renewal of the intern license.

Finally, the bill would allow persons who have otherwise met the qualifications for license by endorsement who have taken and passed a funeral services arts examination that is substantially equivalent or more stringent than the Funeral Services Arts section of the National Board Examination, the examination required in Florida, to gain a funeral director license by endorsement.

¹⁹ Section 497.374, F.S.

²⁰ Section 497.374(1)(b)(2), F.S.

Direct Disposers and Direct Disposer Establishments (Sections 25, 26, 27)

Current Situation

Currently, the state of Florida has 162 licensed direct disposers and 60 direct disposer establishments.²¹ Direct disposers may only remove human remains from the place of death and then transport and store them in a registered direct disposal establishment, secure pertinent information to file the death certificate and permit for direct disposition, and refrigerate remains prior to direct disposition.²² Direct disposition means the cremation of human remains without preparation of the human remains by embalming and without any attendant services or rites such as funeral or graveside services, or making the arrangements for final disposition.²³ Thus, direct disposers may not embalm human remains or engage in any activities considered to be within the realm of funeral directing.²⁴

Direct disposal establishments must maintain a refrigeration facility for the dead bodies²⁵ and may also be a cinerator facility that performs cremations.²⁶ There are currently 142 cinerator facilities in the state,²⁷ and all cinerator facilities must be supervised by a licensed funeral director or licensed direct disposer.²⁸ Of the 82,652 cremations performed in 2008, 8,171 were performed by a direct disposer, or approximately 10% of all cremations.²⁹ Direct disposal establishments must also be supervised by a full-time licensed direct disposer or licensed funeral director acting as a direct disposer in charge of the establishment.³⁰ He or she may only be in charge of one direct disposal establishment.³¹

Beyond application disclosure requirements, an applicant for license as a direct disposer must receive a passing grade in a college credit course in Florida mortuary law and communicable diseases, and pass an examination prepared by the department on state and federal laws and rules relating to the disposition of dead human bodies.³² Thus, compared to the funeral director license and embalmer license, a direct disposer license has relatively less educational requirements.

Finally, to renew a direct disposal license, which occurs every two years, a licensee must have six hours of continuing education credit.³³ Current law states that a course in communicable diseases may be a part of this requirement; however, it is not required.³⁴

Effect of Proposed Changes

The bill would require applicants to receive a passing grade in a college credit course in ethics along with the mortuary law and communicable disease courses to receive their licenses. Similarly, it would also require a course in communicable diseases as part of the continuing education requirement.

The bill would require direct disposal establishments to have a licensed funeral director as the direct disposer in charge of the establishment. However, direct disposers currently serving as the direct disposer in charge of an establishment may continue to do so provided:

²¹ Division of Funeral, Cemetery & Consumer Services, Who the Board Regulates, http://www.myfloridacfo.com/funeralcemetery/fc_who_we_regulate.htm (last visited Jan. 20, 2010).

²² Section 497.601(1), F.S.

²³ Section 497.005(51), F.S.

²⁴ Section 497.601(2)-(3), F.S.

²⁵ F.A.C. 69K-23.004(2).

²⁶ Section 497.604(1), F.S.

²⁷ Division of Funeral, Cemetery & Consumer Services, Who the Board Regulates, http://www.myfloridacfo.com/funeralcemetery/fc_who_we_regulate.htm (last visited Jan. 20, 2010).

²⁸ Section 497.606(2)(c), F.S.

²⁹ Florida Direct Disposer Statistics – 2008, Funeral Industry Consultants, Inc., D – 35 and F – 260 (2009).

³⁰ Section 497.604(8), F.S.

³¹ Section 497.604(8), F.S.

³² Section 497.602(3), F.S.

³³ F.A.C. 69K-17.0034(4)(b).

³⁴ Section 497.603(2), F.S.

- they do not become employed by a different direct disposal establishment;
- their license does not become inactive; and
- they meet the naming requirements for issuance, renewal, or notice of change.

Thus, this grandfather provision does not prevent a direct disposer who is presumably qualified to serve as the direct disposer in charge of the establishment from continuing to do so. However, the bill continues to allow either a licensed direct disposer or licensed funeral director to serve as the direct disposer in charge of a cinerator facility. Thus, a cinerator facility, which may also be a direct disposal establishment, would not require a licensed funeral director acting as the direct disposer in charge, but other direct disposal establishments would require a licensed funeral director to serve in that capacity.

The bill may discourage people from becoming licensed as a direct disposer as they will not be qualified to serve as the direct disposer in charge of a direct disposal establishment. As direct disposers represent approximately 10% of all cremations performed in the state³⁵ and cremation rates are expected to increase,³⁶ this may result in more concentrated profits for existing direct disposal establishments and existing direct disposers, or it may make it more difficult to obtain a cremation from a direct disposal establishment.

It is also unclear if there will be a benefit to industry service or quality by requiring a licensed funeral director to act as the direct disposer in charge. There may be some benefit from the counseling and personal interaction funeral directors are trained for, however, if the education requirements for direct disposers and funeral director only licenses outlined above become law, a person with a funeral director only license will have the same communicable disease background as direct disposers and will not have any other mortuary science background. Thus, both licensees will have the same expertise in the area of communicable diseases and state and federal laws and rules relating to the disposition of dead human bodies, which are the most directly applicable expertise requirements for direct disposers.

Preneed Contracts (Sections 22, 23, 24)

Current Situation

The Florida legislature established the Preneed Funeral Contract Consumer Protection Trust Fund (hereafter, the Trust Fund) to provide restitution for people who entered into a preneed contract and never received the contracted services or merchandise.³⁷ A preneed contract is essentially a contract for future funeral services or merchandise, or burial services or merchandise that is paid for in advance.³⁸ Current law allows the licensing authority to have rulemaking authority to determine what forms, procedures, and information is needed to support a claim for restitution under the Trust Fund.³⁹

Preneed licensees, persons licensed to sell preneed contracts,⁴⁰ often charge the purchaser of a preneed contract a processing, filing, or archiving fee. There is currently no expressed regulation of processing fees for preneed contracts. Under current law, a specified percentage of the proceeds of the sale of a preneed contract must be placed in trust, but can be withdrawn as and when the goods or services in the preneed contract are actually provided.⁴¹ They must be placed in trust to ensure that the seller of the contract does not simply take the purchaser's money or defraud him or her in some way. However, a processing fee related to the sale of the preneed contract is considered earned almost immediately and so may be withdrawn almost immediately. Thus, preneed licensees have an incentive to cite as much of the contract price as possible within the processing fee so that the money may be withdrawn immediately, rather than when the services or merchandise are actually disbursed.

³⁵ Florida Direct Disposer Statistics – 2008, Funeral Industry Consultants, Inc., D – 35 and F – 260 (2009).

³⁶ U.S. Cremation Statistics, <http://www.nfda.org/consumer-resources-cremation/78-us-cremation-statistics.html> (last visited Jan. 25, 2010).

³⁷ Section 497.456(6), F.S.

³⁸ Section 497.005(54), F.S.

³⁹ Section 497.456(13), F.S.

⁴⁰ Section 497.452(1)(a), F.S.

⁴¹ Section 497.458(1), F.S.

Current law requires that alternative preneed contracts require the purchaser of the contract make all payments required by the contract directly to the trustee, or its qualified servicing agent, and deposit the funds in the state of Florida.⁴² Furthermore, the preneed trust is required to be a trust company operating pursuant to ch. 660, a national bank or state bank holding trust powers, or a federal or state savings and loan association holding trust powers.⁴³ However, these types of firms sometimes have no physical offices in which to deposit the funds within the state of Florida. Thus, they are not eligible to receive the trust deposits. The utility of this requirement may have decreased in recent years as the result of internet banking.

Finally, current law requires disbursement of funds by the trustee to the person issuing or writing the preneed contract upon receipt of the contract beneficiary's death certificate.⁴⁴ There is also no provision directing the trustee on what to do with the funds in the event of partial performance.

Effect of Proposed Changes

The bill requires that claims by consumers or licensees against the Trust Fund be sworn or affirmed and notarized. This may lessen fraud on the part of either the consumer making the claim, or the licensee against whom the claim is made.

The bill specifically authorizes a preneed licensee to charge a processing, filing, archiving, or other administrative fee related to the sale of a preneed contract. It requires the preneed licensee to disclose these charges to the purchaser of the contract and include them on a standard price list. Finally, it exempts these charges from the trust deposit requirements that are required for the funeral service or merchandise or burial service or merchandise provisions of the preneed contract. It is unclear whether this provision will lessen the instance of fraud. It may only further encourage abuse by preneed licensees as the funds will not go into the trust at all.

The bill allows persons to deposit funds into trusts in banks with physical locations outside the state of Florida. This will increase the number of banks that are eligible to hold funds in trust.

Finally, the bill allows the trustee to disburse funds to the person issuing or writing the preneed contract upon the trustee's receipt of satisfactory evidence that the preneed contract has been performed in whole or in part, not solely because the trustee has received the contract beneficiary's death certificate. The bill grants rulemaking authority to the licensing authority to define what satisfactory evidence means. Furthermore, it provides that in the event of partial performance, the trustee shall disburse only the amount that covers the portion of the contract actually performed.

Funeral Director in Charge and Funeral Directing Activities (Sections 15, 21)

Current Situation

Current law states that phoning in or faxing of obituary notices, ordering flowers, delivering death certificates, clerical preparation of death certificates, furnishing standard price lists, removing or transporting dead bodies, arranging or coordinating with removal services, or refrigeration or embalming facilities, making preneed contracts, or performing functions of cemetery or crematory personnel do not constitute activities of a funeral director.⁴⁵

Current law also requires a licensed funeral establishment to have one full-time funeral director in charge (FDIC). This person may hold a funeral director only license and may not be a full-time FDIC for any other funeral establishment or direct disposal establishment.⁴⁶ Current law also states that the licensed funeral establishment must have a licensed funeral director reasonably available to the public

⁴² Section 497.464(3), F.S.

⁴³ Section 497.464(2), F.S.

⁴⁴ Section 497.464(7), F.S.

⁴⁵ Section 497.276(2), F.S.

⁴⁶ Section 497.380(7), F.S.

during normal business hours.⁴⁷ Division rule requires the full-time FDIC to be responsible for making sure the funeral establishment and all persons employed in the establishment comply with all applicable laws and rules of the Board of Funeral, Cemetery, and Consumer Services.⁴⁸ However, it is unclear whether the Division has rulemaking authority to establish this requirement for the full-time FDIC.

Effect of Proposed Changes

The bill would add electronic transmission of obituary notices and the clerical processing of death certificates to the activities that are not considered to constitute activities of a funeral director. While these additions may be unnecessary as the inclusion of other forms of transmission of obituary notices are already listed and preparation of death certificates may encompass processing, these additions will at least clarify what other duties non licensed funeral establishment personnel may engage in.

The bill would require the full-time FDIC to hold a combination funeral director and embalmer license. However, persons currently serving as full-time FDICs who currently hold a funeral director only license may continue to serve as the full-time FDIC for a funeral establishment if:

- the funeral establishment and the funeral director both hold active and valid licenses; and
- the funeral director's name was included in the funeral establishment's most recent application for issuance or renewal of its license, or was included in the establishment's report of change.

This grandfather provision would allow full-time FDICs who already have the experience serving as full-time FDICs to continue to do so, but would prevent persons without the knowledge or expertise in embalming from being in charge of the funeral establishment. Especially if the education requirements for funeral director only licenses outlined above become law, this may be an important precaution in ensuring industry safety and compliance with rules and regulations related to embalming and handling of dead human remains as funeral director only licensees will not have the background in mortuary science to ensure compliance.

Finally, the bill makes clear that the full-time FDIC is responsible for ensuring that the facility, its operation, and all persons employed in the facility comply with all applicable state and federal laws and rules. This language mostly tracks the Division rule, however, it requires the full-time FDIC to not only ensure compliance with Board laws and rules, but all state and federal laws and rules. However, while the Division rule states that this full-time FDIC responsibility shall not be construed to absolve funeral establishments or other persons from liability for their violations of such laws and rules, the bill has no such language. Thus, it is unclear whether this provision may make full-time FDICs liable for violations, but not funeral establishments themselves.

Public Emergencies (Sections 3, 7, 10)

Current Situation

Current law does not provide procedures or rulemaking authority for the licensing authority to waive or modify any provisions of chapter 497 in the event of an emergency. However, current law does provide that limited licenses may be issued during times of "critical need."⁴⁹ These limited licenses are for retired professionals who have an embalmer's license, funeral director only license, or combination license and would only be valid during the time of critical need.⁵⁰ The rule does not specify that the retirees must be from the state of Florida.

⁴⁷ Section 497.380(7), F.S.

⁴⁸ F.A.C. 69K-21.007.

⁴⁹ Section 497.143(5), F.S.

⁵⁰ F.A.C. 69K-25.004.

Effect of Proposed Changes

The bill allows the licensing authority to temporarily waive any provisions of chapter 497 during a state of emergency declared by the Governor. Furthermore, it specifies that retired Florida licensees, rather than any retired licensee, as well as active licensees from other states be allowed to serve during times of critical need. It also deletes the fee requirement for these limited licenses in all circumstances. Finally, it grants rulemaking authority to the licensing authority to temporarily waive provisions, and it grants rulemaking authority to the Department of Financial Services to establish rules and procedures for the event of an emergency situation. It specifies that the emergency rules and procedures may be adopted prior to an actual emergency and may stay in effect for a limited time after the state of emergency is terminated.

Placement of Monuments in Cemeteries (Section 14)

Current Situation

A cemetery company may not require any person or firm that installs, places, or sets a monument to obtain any form of insurance, bond, surety, or make any form of pledge, deposit, or monetary guarantee as a condition for entry on or access to cemetery property.⁵¹ Both cemeteries and monument establishments sell and install grave markers and monuments. Thus, cemeteries have a financial interest in restricting monument establishments' access to cemeteries. They also have an interest in ensuring that their property is not damaged by monument establishments that deliver, install, place, or set monuments on their property. The prohibition on requiring insurance, bonds, pledges, etc. from monument establishments by cemeteries seems to indicate a legislative preference for unrestricted access to the cemeteries and in turn, lower prices charged by monument establishments for their products. As of March 1, 2008 there were 99 licensed monument establishments and 172 licensed cemeteries.⁵²

Effect of Proposed Changes

The bill would require people or firms delivering, installing, placing, or setting a monument to show proof of liability insurance coverage and worker's compensation insurance coverage as required by law. The cemetery may not specify the amount of insurance required or require the person or firm to obtain a bond, surety, or make any form of pledge, deposit, or monetary guarantee as a condition for entry or access. This means cemeteries would not be allowed to require more insurance than the law already requires.

Thus, the bill would allow cemeteries some assurances against property damage as the result of delivery, installation, placement, or setting of the monuments, but would also prevent cemeteries from requiring more insurance than is required by law and thereby restricting monument establishments' access to the property.

Process Fees Charged to Customers by Cemeteries (Section 13)

Current Situation

Current law prohibits cemeteries from charging fees for anything but the sale of burial rights, burial merchandise, and burial service except for:

- Opening and closing a grave or vault installation;
- Transferring burial rights;
- Sales, documentary excise or other taxes actually and necessarily paid to a public official;
- Credit life and credit disability insurance; and

⁵¹ Section 497.278(3), F.S.

⁵² Division of Funeral, Cemetery & Consumer Services, Who the Board Regulates, http://www.myfloridafo.com/funeralcemetery/fc_who_we_regulate.htm (last visited Jan. 20, 2010).

- Interest on unpaid balances pursuant to ch. 687.⁵³

Effect of Proposed Changes

The bill allows for the charge of a processing fee to customers by cemeteries for processing, filing, and archiving, and other administrative duties. These fees must be disclosed to the customer and must be shown on the cemetery's standard price lists.

However, the bill stipulates that these processing fees may not be charged in regards to sales contracts for the opening and closing of a grave or other burial right, or for the installation of a vault in a grave for which burial rights were previously purchased. This provision appears to address preneed contracts and prohibits that processing fees may be charged by cemeteries for these kinds of sales contracts.

Finally, the bill states that the charges are not subject to trusting under section 497.458, F.S. This may be redundant as the language of the bill seems to indicate that no processing fees may be charged for these forms of preneed contracts, and the trusting requirement of section 497.458, F.S. only applies to preneed contracts for the purposes of the Trust Fund.

Disclosure of Criminal Record (Sections 5, 6, 9)

Current Situation

Current law requires that all licensees disclose their criminal records when applying for a license.⁵⁴ The licensee must disclose crimes for which the person was convicted of, or plead no contest to.⁵⁵ The crimes that are required to be listed are:

- Any felony or misdemeanor, no matter when committed, that was directly or indirectly related to or involved any aspect of the business of funeral directing, embalming, direct disposition, cremation, preneed sales, funeral or cemetery establishment operations, or cemetery monument or maker sales or installation;
- Any felony committed immediately preceding twenty years before the application; and
- Any misdemeanor committed immediately preceding five years before the application.⁵⁶

Similarly, being convicted, or found guilty of, or entering a plea of no contest to, regardless of the adjudication, for a crime related to the practice of the licensee's profession constitutes grounds for disciplinary action under ch. 497.⁵⁷

While current law does require disclosure of criminal records,⁵⁸ it does not specify what the consequences of having a criminal record to the applicant for an initial or renewed license are or should be.

Effect of Proposed Changes

The bill would require licensees to disclose their criminal records when applying for or renewing their licenses. However, the current language of Section 6 may be somewhat unclear as to which crimes must be disclosed depending on whether it is the initial or renewed license.

Furthermore, it would require the disclosure of all crimes to be listed under section 497.142(10)(c), F.S. for which the applicant plead guilty. This may represent the correction of a drafting error as generally if a person is required to disclose crimes for which he or she was convicted of, or plead no contest to, he

⁵³ Section 497.277(1)-(5), F.S.

⁵⁴ Section 497.142(10)(a), F.S.

⁵⁵ Section 497.142(10)(b), F.S.

⁵⁶ Section 497.142(10)(c), F.S.

⁵⁷ Section 497.152(2), F.S.

⁵⁸ Section 497.142(10)(a), F.S.

or she would seem to need to disclose crimes for which he or she plead guilty to as well.⁵⁹ Section 9 of the bill also adds a plea of guilty to the list of specified crimes that are grounds for disciplinary action under ch. 497.

The bill would prohibit the licensing authority from issuing or renewing a license to an applicant who has a criminal record that is required to be disclosed, unless the applicant demonstrates that the issuance or renewal of the license does not constitute a threat to the public. Thus, this section specifies the consequences of having a criminal record. However, there may be some concern that the rulemaking authority granted to the licensing authority may not be sufficient as the bill does not define “threat to the public,” or provide the licensing authority with guidelines in determining what “threat to the public” should mean.

Health and Safety Education (Sections 11, 20, 28)

Current Situation

Current law states that all individuals not licensed under ch. 497 who intend to be employed as operational personnel affiliated with a direct disposal establishment, cinerator facility, removal service, refrigeration facility, or centralized embalming facility, or who intend to be involved in the removal or transportation of human remains must complete one course approved by the licensing authority on communicable diseases within ten days of beginning employment.⁶⁰

Current Division rules define operational personnel as “individuals who come in direct contact with or remove or transport dead human remains, or those individuals who come in direct contact with blood or other body fluids.”⁶¹ However, the statute itself does not define operational personnel.

Current law also states that as part of the continuing education credit requirement, licensees must complete a course on communicable diseases that specifically includes a course on HIV/AIDS.⁶² HIV/AIDS is one type of communicable disease.⁶³

Effect of Proposed Changes

The bill limits the education requirement to operational personnel “who have direct contact with” human remains. Thus, the bill may relax the requirements under current Division rule as the rules also specify direct contact with blood or other body fluids.

The bill would delete the separate requirement that continuing education credit requires a course dealing specifically with HIV/AIDS. It would not repeal the requirement for a course on communicable diseases in general, however. As HIV/AIDS is one particular type of communicable disease, it appears that a separate distinction and course focus may not be necessary.

Board Composition and Continuing Education Requirement for Licensees (Sections 2, 8)

Current Situation

The Board of Funeral, Cemetery, and Consumer Services consists of ten members, nine of whom are nominated by the Chief Financial Officer and appointed by the Governor, and one of whom must be the State Health Officer or his or her designee.⁶⁴ Current law states that one member of the board must be

⁵⁹ Throughout Florida Statutes this seems to be the norm. For example, section 633.081(2)(b), F.S. excludes all persons who have been found guilty of, or having pled guilty or nolo contendere to, (no contest to) a felony or crime punishable by imprisonment of one year or more under federal law or the state law of any state from being certified to conduct a firesafety inspection.

⁶⁰ Section 497.162, F.S.

⁶¹ F.A.C. 69K-15.005.

⁶² Section 497.378(1), F.S.

⁶³ Center for Disease Control and Prevention, Basic Information Topics: HIV/AIDS, <http://www.cdc.gov/hiv/topics/basic/index.htm> (last visited Feb. 10, 2010).

⁶⁴ Section 497.101(1), F.S.

a monument establishment licensee.⁶⁵ As monument licensees are often corporations, not individual people, this seems to indicate that a corporation may be appointed as a board member.⁶⁶

The Board is authorized by rule to provide up to five hours of continuing education credit per continuing education reporting period for licensees who attend board meetings.⁶⁷ All licensees governed by ch. 497 are required to complete Board approved continuing education.⁶⁸ Current law limits the number of continuing education credit hours a licensee may receive by attending a board meeting to five.⁶⁹ Current law also states that the Board may limit the number of times such credit may be utilized by the licensee.⁷⁰ Finally, current law states that the Board may require more than five hours of attendance to receive five hours of credit.⁷¹

Currently, funeral directors and embalmers are required to complete twelve hours of continuing education credit, while registered direct disposers are required to complete six hours.⁷² Of the required credits, one credit must be a course in communicable disease and HIV/AIDS, while all other credits may be obtained on various subjects related to the various licenses, including ethics, rules, basic theory and practice, and technical subjects, including mortuary science.⁷³

Effect of Proposed Changes

The bill inserts the words “a principle of” before “a monument establishment licensed under this chapter as a monument builder” to indicate that a single person, rather than a corporation, shall be appointed to the Board. Chapter 497 defines “principle” as:

“The sole proprietor of a sole proprietorship; all partners of a partnership; all members of a limited liability company; regarding a corporation, all directors and officers, and all stockholders controlling more than 10 percent of the voting stock; and all other persons who can exercise control over the person or entity.”⁷⁴

The bill also liberalizes the requirements for obtaining continuing education credit hours by attending board meetings. The bill deletes language prohibiting licensees from obtaining more than five continuous education credit hours, as well as the limitations on the number of times such credit may be utilized by the licensee, and the ability of the Board to require more than five hours of attendance to get five hours of credit.

While this provision may encourage licensees to participate and be more active within the profession through attendance at the meetings, it may also decrease the amount of technical, ethical, and practical educational credit licensees obtain. This may negatively impact the ongoing expertise of the licensees within their profession.

Online Licensing Systems (Section 5)

Current Situation

To apply for an initial or renewal license under ch. 497, applicants must fill out paper applications and mail them to the Division.⁷⁵

⁶⁵ Section 497.101(2), F.S.

⁶⁶ See Section 497.141(12)(b), F.S.

⁶⁷ Section 497.147(5), F.S.

⁶⁸ F.A.C. 69K-17.0034(2).

⁶⁹ Section 497.147(5), F.S.

⁷⁰ Section 497.147(5), F.S.

⁷¹ Section 497.147(5), F.S.

⁷² F.A.C. 69K-17.0034(4).

⁷³ Florida Department of Financial Services, CE Requirements, *available at*: https://facs.fldfs.com/public/pb_cereq_1st.asp (last visited Feb. 2, 2010).

⁷⁴ Section 497.005(56), F.S.

⁷⁵ F.A.C. 69K-1.001.

Effect of Proposed Changes

The bill would grant rulemaking authority to the licensing authority to require applicants to apply for an initial or renewal license in an online format. It also specifies that the online electronic format for renewal of a license must not allow submission of an improperly prepared renewal application and that the applicant must be allowed to print a receipt of the properly prepared renewal application.

Finally, the bill authorizes the licensing authority to impose up to a \$25 fee on licensees filing paper applications whenever an online system is available. This fee may incentivize applicants to utilize the available online system.

Display of License (Sections 19, 21, 27)

Current Situation

Current law requires licensed funeral directors and embalmers to display their licenses and a recent photo so that they are visible to the public and may facilitate inspection by the licensing authority.⁷⁶ Although the statute does not specify how old the photo may be, Division rules require the photo to be less than two years old.⁷⁷

Furthermore, Division rules state that funeral establishments must have their current licenses displayed so they are visible to the public and to facilitate inspection by the licensing authority.⁷⁸ Rules also require licensees employed at multiple establishments to have a copy of their license readily available at all locations.⁷⁹ This indicates that an original license certificate is not necessary for display purposes. It also appears that the rules as written do not require the display of copies of licenses for licensees employed at multiple establishments.

Effect of Proposed Changes

Although section 497.376(2) requiring the display of each type of license under ch. 497 is deleted, it is reinserted into section 497.380 in a modified form. The bill specifies that a funeral establishment and each funeral director and embalmer working at the establishment must display their current license in a conspicuous place visible to the public and to facilitate inspection by the licensing authority. It requires funeral directors and embalmers employed at the establishment to display photos of themselves that are no more than six years old, and it requires licensees who are employed by more than one establishment to display copies of their licenses and photos at those additional establishments.

Thus, the bill appears to allow the display of older photos than are currently allowed by rule and requires the actual display of copied licenses and photos for licensees employed at more than one establishment.

Inspection Fees (Section 4)

Current Situation

Currently a direct disposal establishment licensee is charged for the annual inspection performed by the Division.⁸⁰ Additional inspections are required when a direct disposal establishment relocates, there is a consumer complaint filed, or there is a change in ownership or control of the establishment.⁸¹ However, current law does not allow for an inspection fee on the additional inspection. Thus, the Division incurs additional costs for inspections of these establishments.

⁷⁶ Section 497.376(2), F.S.

⁷⁷ F.A.C. 69K-21.005(3).

⁷⁸ F.A.C. 69K-21.005(1).

⁷⁹ F.A.C. 69K-21.005(2).

⁸⁰ F.A.C. 69K-23.004(7).

⁸¹ F.A.C. 69K-23.004(3).

Effect of Proposed Changes

The bill would authorize the licensing authority to impose an inspection fee for conducting inspections of establishments that have changed ownership or control, or changed location. However, it would not allow the licensing authority to charge a fee for an inspection because of a consumer complaint. This would allow the licensing authority to recoup the cost of the additional inspections and could not exceed the amount of the licensee's annual inspection fee.

B. SECTION DIRECTORY:

None.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There may be a modest increase in revenues as a result of the additional inspection fees collected under section 4. The bill may also result in some cost savings because of the emphasis on online licensing systems under section 5.

2. Expenditures:

There may be some cost associated with the additional rulemaking granted.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase the number of individuals willing and able to become licensed funeral directors. It may also discourage individuals from becoming licensed direct disposers.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES