

STORAGE NAME: h0885s1a.ft

DATE: March 6, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 885

RELATING TO: Funeral Directing, Embalming, and Direct Disposition

SPONSOR(S): Committee on Business Regulation and Consumer Affairs and Representative Crady

COMPANION BILL(S): 2ND ENG/HB 2011(c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 5 NAYS 0
- (2) FINANCE AND TAXATION YEAS 12 NAYS 0
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

This bill is identical in substance (minor bill drafting and wording changes were made for clarity) to the chapter 470, F.S., provisions in HB 2011 that passed the 1997 House by a vote of 116 to 1. The bill changes the law relating to the practices of funeral directing, embalming and direct disposition of human remains. The bill adds clarity to existing language, reduces the time for initial licensure approval, combines the required communicable disease course and the HIV/AIDS course into one course, adds new provisions relating to visitation chapels and identification markings on human remains, and inserts requirements formally in rule for transporting remains and treating them with dignity.

The four centralized embalming facilities in the state would pay a biennial registration fee and an annual inspection fee increasing the Department of Professional Regulation Trust Fund by \$1,600 in FY 1998-99 and by \$400 for FY 1999-00. These fees are consistent with the other fees established by the chapter but were inadvertently omitted when these facilities were first authorized in 1993.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 470, F.S., provides authority to the Department of Business and Professional Regulation (DBPR) and the Board of Funeral Directors and Embalmers to regulate, through licensure, registration and inspection, funeral directors, embalmers, direct disposers and the facilities each operates. The board is given rulemaking authority to set some fees for these regulatory activities.

The chapter was amended in 1996 by chapter 96-355, Laws of Florida, to expand and prioritize the list of individuals having authority to make funeral arrangements. However, the change did not include an attorney-in-fact or health surrogate who could be the only individual available to make the arrangements.

An apprentice is authorized to work in an embalming room. However, the apprentice program is limited to one year while the mortuary science course is a two-year program. Some students choose to work at a funeral home while attending school, but current provisions prevent them from working in the embalming area for more than one year.

An applicant for licensure as a funeral director must complete a one-year internship before taking the licensure examination. Since the exam is given only twice each year, a person may have to wait several months between completing the internship and taking the exam.

Chapter 470, F.S., requires funeral directors, embalmers and direct disposers renewing their licenses to take a specified number of course hours and a course on communicable diseases that includes instruction on HIV and AIDS. However, s. 455.2226, F.S., also requires a course on HIV and AIDS creating confusion as to whether the current courses comply with the two chapters.

Direct disposers offer cremation without embalming or memorial services, usually at a lower cost than a full funeral. In 1993, the law was changed to prohibit direct disposer facilities and funeral homes from collocating (i.e., operating out of the same facility) due to the number of complaints about "bait and switch" operations. The act intended to allow facilities licensed at the time to continue operating. However, due to conflicting effective dates, a few facilities were not covered by the grandfather clause.

Additionally, the 1993 language prevented a funeral home from operating a separate chapel intended merely for visitation purposes at another location. Instances have arisen--particularly in rural areas--where visitation chapels would benefit the community. The 1993 changes also established centralized embalming facilities requiring licensure and inspection. However, the act inadvertently failed to authorize the assessment of registration, inspection, and renewal fees.

Funeral directors, embalmers, and direct disposers must submit information to the DBPR relating to deceased humans; however, no time frame for submission is specified. Therefore, the DBPR does not always receive timely information.

The former Department of Health and Rehabilitative Services had an administrative rule relating to storing, preserving and transporting human remains. That rule was deleted with a recommendation that the provisions be added to chapter 470, F.S.

There is no statutory requirement that proper identification be placed on the remains, casket, or container of a dead human. Winds and floods destroyed cemeteries during Hurricane Andrew and recent floods in the mid-west made it impossible in some instances to match a burial marker with human remains.

B. EFFECT OF PROPOSED CHANGES:

Chapter 470, F.S., is amended to:

- * Allow an attorney-in-fact or a health surrogate to make funeral arrangements when there is no family member
- * Authorize the DBPR to extend the apprentice program to 3 years for students attending mortuary science courses, which will allow students to work in embalming areas and gain additional experience (no registration fees are authorized)
- * Allow an individual to take the funeral director examination prior to completing the one-year internship to reduce the time for licensure approval
- * Combine the course on communicable diseases, required by ss. 470.015 and 470.018, F.S., and the HIV and AIDS course, required by s. 455.2226, F.S., into one course; which would clarify that funeral directors, embalmers, and direct disposers do not have to take two courses on these topics
- * Allow licensed funeral homes to establish visitation chapels within the same county (no additional registration or licensure fees are authorized)
- * Prohibit licensure of collocated facilities after October 1, 1993, to allow those facilities the 1993 law intended to "grandfather-in" to continue to operate
- * Require submission of information relating to deceased persons to the DBPR by the 10th day following the month of final disposition to ensure timely filing of information
- * Establish for centralized embalming facilities a new licensure and biennial renewal fee of up to \$300, a new late payment fee of up to \$50, and a new annual inspection fee of up to \$100 (These fees are consistent with those currently charged for removal and refrigeration facilities and corrects the 1993 inadvertent omission of authority to assess the fees. Testimony was given on March 19, 1997 to the House Committee on Business Regulation and Consumer Affairs that there are less than five of these facilities in Florida and that the Florida Funeral Directors Association is requesting these new fees)
- * Provide the requirements formally in an HRS rule for storing, preserving and transporting human remains including covering the remains during transporting and treating the remains with dignity; and create a first degree misdemeanor penalty for violations
- * Create new requirements for identification markings of human remains to ensure proper identification in the event of a natural disaster

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

Yes.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Chapter 470, Florida Statutes

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 470.002, F.S., to expand the definition of "legally authorized person" to include attorney-in-fact or health surrogate.

Section 2. Amends s. 470.006, F.S., to reword the eligibility requirements for a provisional embalmer license (no substantive change).

STORAGE NAME: h0885s1a.ft

DATE: March 6, 1998

PAGE 7

Section 3. Amends s. 470.0085, F.S., to extend the embalmer apprentice program from one year to three years for mortuary science students employed by funeral establishments and to require those apprentices to register with the department.

Section 4. Amends s. 470.009, F.S., to allow funeral director applicants to take the licensure examination prior to completing the required internship.

Section 5. Amends s. 470.015, F.S., to combine the communicable disease course and the HIV and AIDS course into one course for funeral directors and embalmers seeking licensure renewal.

Section 6. Amends s. 470.018, F.S., to combine the communicable disease course and the HIV and AIDS course into one course for direct disposers seeking licensure renewal.

Section 7. Amends s. 470.024, F.S., to allow funeral homes to operate visitation chapels at no additional regulatory cost and to clarify prohibition against collocating facilities after October 1, 1993.

Section 8. Amends s. 470.029, F.S., to specify the filing with the DBPR of certain documents by the 10th of the month.

Section 9. Amends s. 470.0301, F.S., to establish new fees for centralized embalming facilities consistent with current fees charged for funeral and direct disposal facilities.

Section 10. Creates s. 470.0315, F.S., to establish regulations for the storing, preserving and transporting of human remains and to require licensees to cover and treat with dignity all human remains during transporting and storing; and to provide for a first degree misdemeanor penalty for violations.

Section 11. Creates s. 470.0355, F.S., to require affixing some permanent identification to human remains or containers and to establish that licensees may rely on identification of remains made by a legally authorized person.

Section 12. Amends s. 470.036, F.S., to reword current penalty provisions to reduce verbiage and to ensure the provisions are applicable to all licensees and registrants.

Section 13. Makes the bill take effect July 1 of the year in which it passes.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

<u>Revenues:</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>
Department of Business & Professional Regulation Professional Regulation Trust Fund	\$1,600	\$400

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

<u>Revenues:</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>
Department of Business & Professional Regulation Professional Regulation Trust Fund	\$1,600	\$400

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Each of the four centralized embalming facilities in the state will pay a \$300 biennial licensure fee and an annual \$100 inspection fee.

2. Direct Private Sector Benefits:

Each facility will be assured that its competition is complying with state law.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

The fees authorized by this bill are consistent with the fees charged to other funeral establishments in the state but were inadvertently omitted in 1993 when centralized embalming facilities were first authorized. The department estimates there are four such facilities in the state. These fees are supported by the Florida Funeral Directors Association and the DBPR.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This act does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This act does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This act does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute differs from the original house bill by rewording sections 4, 5, 6, 9, 10, and 12, but making no substantive change to the effect of those sections, and by: Section 2. Adding a new section 2. to the bill that amends s. 470.006, F.S., to reword the eligibility requirements for a provisional embalmer's license; the change is for clarity, no substantive changes are made.

Section 3. Extending from one year to three years the period of time a person may serve as an embalmer apprentice provided the person is taking courses in mortuary science or funeral service.

Section 7. Allowing establishment of visitation chapels, and changes the date on which the prohibition of collocated facilities takes effect from October 1, 1997 to October 1, 1993. This earlier date has the same effect as the language in HB 885 without extending the date unnecessarily.

STORAGE NAME: h0885s1a.ft

DATE: March 6, 1998

PAGE 10

Section removed. Deleting amendments to s. 470.0294, F.S., that excluded licensees from liability when they relied on representations of a legally authorized person. This language was objected to and deleted from HB 2011 by the 1994 Committee on Business Regulation and Consumer Affairs.

Section 12. Rewording the current penalty provisions to reduce verbiage and to ensure the provisions are applicable to all licensees and registrants.

Section 13. Changing the effective date from October 1, 1997, to July 1 of the year in which the bill is enacted to update the effective date.

Note: Sections 1, 8 and 11 are identical to HB 885.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER SERVICES:

Prepared by:

Legislative Research Director:

Rebecca R. Everhart

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Legislative Research Director:

Carol L. Dickson-Carr

Keith G. Baker, Ph.D.