

By Representative Ritchie

1                                   A bill to be entitled  
2           An act relating to funeral and cemetery  
3           services; amending s. 497.003, F.S.; revising  
4           terminology relating to cemeteries owned by a  
5           religious institution; amending s. 497.005,  
6           F.S.; defining the term "religious  
7           institution"; amending s. 497.103, F.S.;  
8           eliminating a reference to an examination fee;  
9           amending ss. 497.117 and 497.131, F.S.;  
10          revising terminology designating a trust fund;  
11          amending s. 497.213, F.S.; increasing annual  
12          license fees for certain cemeteries; amending  
13          s. 497.245, F.S.; eliminating reference to  
14          annual examination fees; amending ss. 497.341  
15          and 497.405, F.S.; revising terminology  
16          relating to cemeteries owned by a religious  
17          institution; amending s. 497.407, F.S.;  
18          providing initial application and renewal fees  
19          for a certificate of authority to sell a  
20          preneed contract; revising terminology  
21          designating a trust fund; amending s. 497.431,  
22          F.S.; eliminating the fee charged to examine  
23          the business of any person writing preneed  
24          contracts and any guaranteeing organization;  
25          revising the expenses the person or  
26          organization being examined is responsible for  
27          paying in connection with an examination;  
28          amending s. 497.435, F.S.; revising terminology  
29          designating a trust fund; requiring the  
30          Department of Banking and Finance to conduct a  
31          comprehensive review of ch. 497, F.S., the

1 Florida Funeral and Cemetery Services Act, and  
2 to conduct public workshops and produce  
3 preliminary and final reports thereon;  
4 providing an appropriation; providing effective  
5 dates.

6  
7 Be It Enacted by the Legislature of the State of Florida:

8  
9 Section 1. Subsections (1), (4), and (5) of section  
10 497.003, Florida Statutes, are amended to read:

11 497.003 Cemeteries; exemption; investigation and  
12 mediation.--

13 (1) The provisions of this chapter relating to  
14 cemeteries and all rules adopted pursuant thereto shall apply  
15 to all cemeteries except for:

16 (a) ~~Church~~ Cemeteries of less than 5 acres which are  
17 owned by a religious institution and provide only single-level  
18 ground burial.

19 (b) County and municipal cemeteries.

20 (c) Community and nonprofit association cemeteries  
21 which provide only single-level ground burial and do not sell  
22 burial spaces or burial merchandise.

23 (d) Cemeteries owned and operated or dedicated by a  
24 religious institution ~~churches~~ prior to June 23, 1976.

25 (e) Cemeteries beneficially owned and operated since  
26 July 1, 1915, by a fraternal organization or its corporate  
27 agent.

28 (f) A columbarium consisting of less than one-half  
29 acre which is owned by and immediately contiguous to an  
30 existing ~~church~~ facility owned by a religious institution and  
31 is subject to local government zoning. The religious

1 institution ~~church~~ establishing such a columbarium shall  
2 ensure that the columbarium is perpetually kept and maintained  
3 in a manner consistent with the intent of this chapter. If  
4 the religious institution ~~church~~ relocates, the religious  
5 institution ~~church~~ shall relocate all of the urns and remains  
6 placed in the columbarium which were placed therein during its  
7 use by the religious institution ~~church~~.

8 (g) Family cemeteries of less than 2 acres which do  
9 not sell burial spaces or burial merchandise.

10 (h) A mausoleum consisting of 2 acres or less which is  
11 owned by and immediately contiguous to an existing ~~church or~~  
12 ~~synagogue~~ facility owned by a religious institution and is  
13 subject to local government zoning. The religious institution  
14 ~~church or synagogue~~ establishing such a mausoleum must ensure  
15 that the mausoleum is kept and maintained in a manner  
16 consistent with the intent of this chapter and limit its  
17 availability to members of the religious institution ~~church or~~  
18 ~~synagogue~~. The religious institution ~~church or synagogue~~  
19 establishing such a mausoleum must have been incorporated for  
20 at least 25 years and must have sufficient funds in an  
21 endowment fund to cover the costs of construction of the  
22 mausoleum.

23 (4) Any ~~church-owned~~ cemetery that is owned by a  
24 religious institution and is exempt under paragraph (1)(d), is  
25 located in a county with a population of at least 1.3 million  
26 persons on July 1, 1996, and was selling merchandise and  
27 services to the religious institution's ~~church's~~ members prior  
28 to October 1, 1993, may establish one additional exempt  
29 cemetery in such county after December 31, 2020, without  
30 establishing need under s. 497.201.

31

1           (5) Any ~~church-owned~~ cemetery that is owned by a  
2 religious institution and is exempt under subsection (1),  
3 except those cemeteries qualifying under paragraph (1)(d),  
4 which becomes affiliated with a commercial enterprise must  
5 meet the requirements of s. 497.201.

6           Section 2. Subsections (31), (32), and (33) of section  
7 497.005, Florida Statutes, 1998 Supplement, are renumbered as  
8 subsections (32), (33), and (34), respectively, and a new  
9 subsection (31) is added to said section to read:

10           497.005 Definitions.--As used in this chapter:

11           (31) "Religious institution" means a church,  
12 synagogue, mosque, or any other established physical place for  
13 worship in this state at which nonprofit religious services  
14 and activities are regularly conducted.

15           Section 3. Subsection (4) of section 497.103, Florida  
16 Statutes, 1998 Supplement, is amended to read:

17           497.103 Rulemaking authority of board and  
18 department.--

19           (4) The department shall examine the financial affairs  
20 of any cemetery company and any preneed sales  
21 certificateholder ~~and charge an examination fee as prescribed~~  
22 ~~in s. 497.431.~~

23           Section 4. Subsection (1) of section 497.117, Florida  
24 Statutes, is amended to read:

25           497.117 Legal and investigative services.--

26           (1) The Department of Legal Affairs shall provide  
27 legal services to the board within the Department of Banking  
28 and Finance, but the primary responsibility of the Department  
29 of Legal Affairs shall be to represent the interests of the  
30 citizens of the state by vigorously counseling the board with  
31 respect to its obligations under the laws of the state.

1 Subject to the prior approval of the Attorney General, the  
2 board may retain independent legal counsel to provide legal  
3 advice to the board on a specific matter. Fees and costs of  
4 such counsel shall be paid from the Regulatory Trust Fund of  
5 the Department of Banking and Finance.

6 Section 5. Subsection (4) of section 497.131, Florida  
7 Statutes, is amended to read:

8 497.131 Disciplinary proceedings.--

9 (4) The determination as to whether probable cause  
10 exists shall be made by majority vote of the probable cause  
11 panel of the board. The board shall provide, by rule, that the  
12 determination of probable cause shall be made by a panel of  
13 its members or by the department. The board may provide, by  
14 rule, for multiple probable cause panels composed of at least  
15 two members. The board may provide, by rule, that one or more  
16 members of the panel or panels may be a former board member.  
17 The length of term or repetition of service of any such former  
18 board member on a probable cause panel may vary according to  
19 the direction of the board when authorized by board rule. Any  
20 probable cause panel must include one of the board's former or  
21 present consumer members, if one is available, willing to  
22 serve, and is authorized to do so by the board chair. Any  
23 probable cause panel must include a present board member. Any  
24 probable cause panel must include a former or present  
25 professional board member. However, any former professional  
26 board member serving on the probable cause panel must hold an  
27 active valid license for that profession. All probable cause  
28 proceedings conducted pursuant to the provisions of this  
29 section are exempt from the provisions of s. 286.011 and s.  
30 24(b), Art. I of the State Constitution. The probable cause  
31 panel may make a reasonable request, and upon such request the

1 department shall provide such additional investigative  
2 information as is necessary to the determination of probable  
3 cause. A request for additional investigative information  
4 shall be made within 15 days from the date of receipt by the  
5 probable cause panel of the investigative report of the  
6 department. The probable cause panel shall make its  
7 determination of probable cause within 30 days after receipt  
8 by it of the final investigative report of the department. The  
9 Comptroller may grant extensions of the 15-day and the 30-day  
10 time limits. If the probable cause panel does not find  
11 probable cause within the 30-day time limit, as may be  
12 extended, or if the probable cause panel finds no probable  
13 cause, the department may determine, within 10 days after the  
14 panel fails to determine probable cause or 10 days after the  
15 time limit has elapsed, that probable cause exists. If the  
16 probable cause panel finds that probable cause exists, it  
17 shall direct the department to file a formal complaint against  
18 the licensee. The department shall follow the directions of  
19 the probable cause panel regarding the filing of a formal  
20 complaint. If directed to do so, the department shall file a  
21 formal complaint against the subject of the investigation and  
22 prosecute that complaint pursuant to the provisions of chapter  
23 120. However, the department may decide not to prosecute the  
24 complaint if it finds that probable cause had been  
25 improvidently found by the panel. In such cases, the  
26 department shall refer the matter to the board. The board may  
27 then file a formal complaint and prosecute the complaint  
28 pursuant to the provisions of chapter 120. The department  
29 shall also refer to the board any investigation or  
30 disciplinary proceeding not before the Division of  
31 Administrative Hearings pursuant to chapter 120 or otherwise

1 completed by the department within 1 year after the filing of  
2 a complaint. A probable cause panel or the board may retain  
3 independent legal counsel, employ investigators, and continue  
4 the investigation as it deems necessary; all costs thereof  
5 shall be paid from the department's Regulatory Trust Fund. All  
6 proceedings of the probable cause panel shall be exempt from  
7 the provisions of s. 120.525.

8 Section 6. Subsection (1) of section 497.213, Florida  
9 Statutes, is amended to read:

10 497.213 Annual license fees.--

11 (1) The department shall collect from each cemetery  
12 company operating under the provisions of this chapter an  
13 annual license fee as follows:

14 (a) For a cemetery with less than \$25,000 annual gross  
15 sales.....\$250.

16 (b) For a cemetery with at least \$25,000 but less than  
17 \$100,000 annual gross sales.....\$350.

18 (c) For a cemetery with annual gross sales of at least  
19 \$100,000 but less than \$250,000.....\$600.

20 (d) For a cemetery with annual gross sales of at least  
21 \$250,000 but less than \$500,000.....\$900.

22 (e) For a cemetery with annual gross sales of at least  
23 \$500,000 but less than \$750,000.....\$1,350.

24 (f) For a cemetery with annual gross sales of at least  
25 \$750,000 but less than \$1,000,000.....\$2,250~~\$1,750~~.

26 (g) For a cemetery with annual gross sales of  
27 \$1,000,000 ~~or more~~ but less than \$5,000,000.....\$3,250  
28 ~~\$2,650~~.

29 (h) For a cemetery with annual gross sales of  
30 \$5,000,000 or more.....\$4,900.  
31

1           Section 7. Subsection (2) of section 497.245, Florida  
2 Statutes, is amended to read:

3           497.245 Care and maintenance trust fund, percentage of  
4 payments for burial rights to be deposited.--

5           (2) Deposits to the care and maintenance trust fund  
6 shall be made by the cemetery company not later than 30 days  
7 following the close of the calendar month in which any payment  
8 was received; however, when such payments are received in  
9 installments, the percentage of the installment payment placed  
10 in trust must be identical to the percentage which the payment  
11 received bears to the total cost for the burial rights. Trust  
12 income may be used to pay for all usual and customary services  
13 for the operation of a trust account, including, but not  
14 limited to: reasonable trustee and custodian fees, investment  
15 adviser fees, allocation fees, and taxes, ~~and annual~~  
16 ~~examination fees~~. If the net income is not sufficient to pay  
17 the fees and other expenses, the fees and other expenses shall  
18 be paid by the cemetery company. Capital gains taxes shall be  
19 paid from the corpus.

20           Section 8. Subsection (1) of section 497.341, Florida  
21 Statutes, is amended to read:

22           497.341 Burial without regard to race or color.--

23           (1) No cemetery company or other legal entity  
24 conducting or maintaining any public or private cemetery may  
25 deny burial space to any person because of race or color. A  
26 cemetery company or other entity operating any cemetery may  
27 designate parts of cemeteries or burial grounds for the  
28 specific use of persons whose religious code requires  
29 isolation. Church Cemeteries that are owned by a religious  
30 institution may limit burials to church members of the  
31 religious institution and their families.



1 Section 9. Subsection (4) of section 497.405, Florida  
2 Statutes, is amended to read:

3 497.405 Certificate of authority required.--

4 (4) The provisions of this section do not apply to  
5 ~~church-owned~~ cemeteries that are owned by a religious  
6 institution and are exempt under s. 497.003(1)(d), in counties  
7 with a population of at least 960,000 persons on July 1, 1996,  
8 with respect to the sale to the religious institution's  
9 ~~church's~~ members and their families of interment rights,  
10 mausoleums, crypts, cremation niches, vaults, liners, urns,  
11 memorials, vases, foundations, memorial bases, floral  
12 arrangements, monuments, markers, engraving, and the opening  
13 and closing of interment rights, mausoleums, crypts and  
14 cremation niches, if such cemeteries have engaged in the sale  
15 of preneed contracts prior to October 1, 1993, and maintain a  
16 positive net worth at the end of each fiscal year of the  
17 cemetery.

18 Section 10. Subsections (4), (9), and (12) of section  
19 497.407, Florida Statutes, are amended to read:

20 497.407 Certificate of authority; initial application  
21 and renewal fees; annual statement; renewal; transfer.--

22 (4)(a) An application to the board for an initial  
23 certificate of authority shall be accompanied by an  
24 application fee of \$250. Thereafter, each annual application  
25 for renewal of a certificate of authority shall be accompanied  
26 by the appropriate fee as follows:

27 1. For a certificateholder with less than \$100,000 in  
28 gross sales during the immediate preceding year.....\$250.

29 2. For a certificateholder with at least \$100,000 but  
30 less than \$250,000 in gross sales during the immediate  
31 preceding year.....\$400.

1           3. For a certificateholder with at least \$250,000 but  
2 less than \$500,000 in gross sales during the immediate  
3 preceding year.....\$600.  
4           4. For a certificateholder with at least \$500,000 but  
5 less than \$750,000 in gross sales during the immediate  
6 preceding year.....\$1,000.  
7           5. For a certificateholder with at least \$750,000 but  
8 less than \$1,000,000 in gross sales during the immediate  
9 preceding year.....\$1,500.  
10          6. For a certificateholder with at least \$1,000,000  
11 but less than \$5,000,000 in gross sales during the immediate  
12 preceding year.....\$2,000.  
13          7. For a certificateholder with annual gross sales of  
14 \$5,000,000 or more.....\$4,900.  
15          (b) The fee payable to the department for issuance of  
16 the original certificate of authority and each annual renewal  
17 thereof shall be set by the board at an amount not to exceed  
18 \$500 and shall accompany each application for an original  
19 certificate and, thereafter, each annual statement. Any person  
20 or entity that is part of a common business enterprise that  
21 has a certificate of authority issued pursuant to this section  
22 and elects to operate under a name other than that of the  
23 common business enterprise shall submit an application on a  
24 form adopted by the board to become a branch registrant. Upon  
25 the approval of the board that such entity qualifies to sell  
26 preneed contracts under this chapter except for the  
27 requirements of subparagraph (2)(c)1. and if the  
28 certificateholder meets the requirements of such subparagraph,  
29 a branch registration shall be issued. Each branch registrant  
30 may operate under the certificate of authority of the common  
31 business enterprise upon the payment of a fee established by

1 the board not to exceed ~~\$150~~\$100 accompanying the application  
2 on April 1 annually. The fee shall be payable to the  
3 department's Regulatory Trust Fund ~~under the Division of~~  
4 ~~Finance~~.

5 (9) In addition to any other penalty that may be  
6 provided for under this chapter, the board may levy a fine not  
7 to exceed \$50 a day for each day the certificateholder fails  
8 to file its annual statement, and the board may levy a fine  
9 not to exceed \$50 a day for each day the certificateholder  
10 fails to file the statement of activities of the trust. Upon  
11 notice to the certificateholder by the board that the  
12 certificateholder has failed to file the annual statement or  
13 the statement of activities of the trust, the  
14 certificateholder's authority to sell preneed contracts shall  
15 cease while such default continues. The board shall deposit  
16 all sums collected under this section to the credit of the  
17 department's Regulatory Trust Fund ~~under the Division of~~  
18 ~~Finance~~.

19 (12) Each certificateholder shall pay to the  
20 department's Regulatory Trust Fund ~~under the Division of~~  
21 ~~Finance~~ an amount established by the board not to exceed \$10  
22 ~~\$5~~ for each preneed contract entered into. This amount must be  
23 paid within 60 days after the end of each quarter. These funds  
24 must be used to defray the cost of the board and the  
25 department in administering the provisions of this chapter.

26 Section 11. Section 497.431, Florida Statutes, is  
27 amended to read:

28 497.431 Examinations and investigations.--The  
29 department shall, as often as it may deem necessary but at  
30 least once every 3 years, examine the business of any person  
31 writing preneed contracts and any guaranteeing organization

1 existing under this chapter to the extent applicable. The  
2 examination shall be ~~at the expense of the person or~~  
3 ~~organization examined as provided in this section and shall be~~  
4 made by ~~the~~ designated representatives or examiners  
5 ~~representative or examiner~~ of the department. The written  
6 report of each such examination, when completed, shall be  
7 filed in the office of the board and, when so filed, shall  
8 constitute a public record. Any such person or organization  
9 being examined shall produce, upon request, all records of the  
10 company or organization. The designated representative of the  
11 board may at any time examine the records and affairs of any  
12 such person or organization, whether in connection with a  
13 formal examination or not. The board may waive the examination  
14 requirements of this section if the certificateholder or  
15 guaranteeing organization submits audited financial  
16 statements. ~~The department may charge an examination fee~~  
17 ~~prescribed by rule, but such fee may not exceed \$300 per~~  
18 ~~8-hour day for each examiner. Such examination fee shall be~~  
19 ~~calculated on an hourly basis and shall be rounded to the~~  
20 ~~nearest hour.~~The person or organization examined For  
21 ~~out-of-state travel, the licensee shall also pay the travel~~  
22 expense and per diem subsistence allowance provided for state  
23 employees under s. 112.061 for out-of-state travel incurred by  
24 department representatives or examiners in connection with an  
25 examination. The department shall be entitled to recover the  
26 reasonable and justifiable costs of investigation if the  
27 investigation results in judicial or administrative  
28 disciplinary action.

29 Section 12. Subsection (3) of section 497.435, Florida  
30 Statutes, is amended to read:

31

1           497.435 Administrative fine in lieu of revocation or  
2 suspension of certificate of authority.--

3           (3) The fine shall be deposited into the department's  
4 Regulatory Trust Fund ~~under the Division of Finance~~.

5           Section 13. (1) The Department of Banking and Finance  
6 shall conduct a comprehensive review of chapter 497, Florida  
7 Statutes, the Florida Funeral and Cemetery Services Act. In  
8 conducting its review, the department shall:

9           (a) Examine ways to promote and increase competition  
10 in the cemetery industry and streamline the regulatory process  
11 under the chapter.

12           (b) Examine ways to eliminate the determination of  
13 need for new cemeteries required by s. 497.201, Florida  
14 Statutes, address constitutional concerns, and minimize  
15 negative impacts on existing cemeteries.

16           (c) Examine and determine the cost of providing  
17 perpetual care for cemeteries.

18           (d) Examine the statutory requirements for care and  
19 maintenance trust funds to determine if the requirements are  
20 adequate to provide perpetual care for cemeteries.

21           (e) Examine the disciplinary powers of the department  
22 and the Board of Funeral and Cemetery Services to ensure clear  
23 and concise enforcement.

24           (f) Examine other sections of the chapter, as  
25 necessary.

26           (g) Report findings and make recommendations  
27 concerning solutions to problems identified by the department,  
28 including proposed legislation deemed advisable to implement  
29 recommended solutions.

30           (h) Conduct at least two public workshops prior to  
31 December 1, 1999, in order to receive public comment.

1         (2) The department shall produce a preliminary report  
2 by December 1, 1999, and a final report by January 15, 2000,  
3 detailing its findings and recommendations. The department  
4 shall conduct at least one public workshop between December 1,  
5 1999, and January 15, 2000, to solicit public testimony  
6 concerning the preliminary draft. A copy of the final report  
7 shall be presented to the President and the Minority Leader of  
8 the Senate, the Speaker and the Minority Leader of the House  
9 of Representatives, the Governor, and the Office of Program  
10 Policy Analysis and Government Accountability.

11         (3) This section shall take effect upon this act  
12 becoming a law.

13                 Section 14. There is hereby appropriated \$115,000 for  
14 fiscal year 1999-2000 to the Department of Banking and Finance  
15 from the department's Regulatory Trust Fund for the purpose of  
16 carrying out the provisions of this act.

17                 Section 15. Except as otherwise provided herein, this  
18 act shall take effect July 1, 1999.

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20                         \*\*\*\*\*

21                                 HOUSE SUMMARY

22  
23         Revises various provisions of ch. 497, F.S., the Florida  
24         Funeral and Cemetery Services Act. Defines the term  
25         "religious institution" and revises terminology relating  
26         to cemeteries owned by such institutions, to conform.  
27         Revises other terminology designating a trust fund.  
28         Increases annual license fees for cemeteries with annual  
29         gross sales above a certain amount. Eliminates references  
30         to annual and other examination fees. Provides initial  
31         application and renewal fees for a certificate of  
32         authority to sell a preneed contract. Eliminates the fee  
33         charged to examine the business of any person writing  
34         preneed contracts and any guaranteeing organization, and  
35         revises the expenses the person or organization being  
36         examined is responsible for paying in connection with an  
37         examination. Requires the Department of Banking and  
38         Finance to conduct a comprehensive review of ch. 497,  
39         F.S., and to conduct public workshops and produce  
40         preliminary and final reports thereon. See bill for  
41         details.