

By Senator Klein

28-977-99

1                                   A bill to be entitled  
 2           An act relating to cemeteries; amending s.  
 3           497.003, F.S.; prescribing exemptions from  
 4           regulations; amending s. 497.005, F.S.;  
 5           defining the term "religious institution";  
 6           amending s. 497.103, F.S.; deleting an  
 7           examination fee; amending s. 497.213, F.S.;  
 8           increasing annual license fees; amending ss.  
 9           497.341, 497.405, F.S.; conforming provisions;  
 10          amending s. 497.407, F.S.; providing  
 11          application fees and annual renewal fees for  
 12          certificates of authority; increasing fees;  
 13          amending s. 497.431, F.S.; deleting an  
 14          examination fee; requiring the Department of  
 15          Banking and Finance to conduct a review and  
 16          submit a report regarding ch. 497, F.S.;  
 17          providing an appropriation; providing effective  
 18          dates.

19  
 20 Be It Enacted by the Legislature of the State of Florida:

21  
 22           Section 1. Section 497.003, Florida Statutes, is  
 23 amended to read:

24           497.003 Cemeteries; exemption; investigation and  
 25 mediation.--

26           (1) The provisions of this chapter relating to  
 27 cemeteries and all rules adopted pursuant thereto shall apply  
 28 to all cemeteries except for:

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

1 (b) County and municipal cemeteries.

2 (c) Community and nonprofit association cemeteries  
3 which provide only single-level ground burial and do not sell  
4 burial spaces or burial merchandise.

5 (d) Cemeteries owned and operated or dedicated by  
6 religious institutions ~~churches~~ prior to June 23, 1976.

7 (e) Cemeteries beneficially owned and operated since  
8 July 1, 1915, by a fraternal organization or its corporate  
9 agent.

10 (f) A columbarium consisting of less than one-half  
11 acre which is owned by and immediately contiguous to an  
12 existing ~~church~~ facility owned by a religious institution and  
13 is subject to local government zoning. The religious  
14 institution ~~church~~ establishing such a columbarium shall  
15 ensure that the columbarium is perpetually kept and maintained  
16 in a manner consistent with the intent of this chapter. If  
17 the religious institution ~~church~~ relocates, ~~it the church~~  
18 shall relocate all of the urns and remains placed in the  
19 columbarium which were placed therein during its use by the  
20 religious institution ~~church~~.

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

23 (h) A mausoleum consisting of 2 acres or less which is  
24 owned by and immediately contiguous to an existing religious  
25 institution ~~church or synagogue~~ facility and is subject to  
26 local government zoning. The religious institution ~~church or~~  
27 ~~synagogue~~ establishing such a mausoleum must ensure that the  
28 mausoleum is kept and maintained in a manner consistent with  
29 the intent of this chapter and limit its availability to  
30 members of the religious institution ~~church or synagogue~~. The  
31 religious institution ~~church or synagogue~~ establishing such a

1 mausoleum must have been incorporated for at least 25 years  
2 and must have sufficient funds in an endowment fund to cover  
3 the costs of construction of the mausoleum.

4 (2) Section 497.309(1) as to burial records, and ss.  
5 497.321, 497.325, 497.341, and 497.345 apply to all cemeteries  
6 in this state.

7 (3) All cemeteries exempted under this chapter which  
8 are in excess of 5 acres must submit to the following  
9 investigation and mediation procedure by the department in the  
10 event of a consumer complaint:

11 (a) The exempt cemetery shall make every effort to  
12 first resolve a consumer complaint;

13 (b) If the complaint is not resolved, the exempt  
14 cemetery shall advise the consumer of the right to seek  
15 investigation and mediation by the department;

16 (c) If the department receives a complaint, it shall  
17 attempt to resolve it telephonically with the parties  
18 involved;

19 (d) If the complaint still is not resolved, the  
20 department shall conduct an investigation and mediate the  
21 complaint;

22 (e) If the department conducts an onsite investigation  
23 and face-to-face mediation with the parties, it may charge the  
24 exempt cemetery a single investigation and mediation fee not  
25 to exceed \$300, which fee shall be set by rule and shall be  
26 calculated on an hourly basis; and

27 (f) If all attempts to resolve the consumer complaint  
28 fail, the cemetery shall be subject to proceedings for  
29 penalties and discipline under this chapter.

30 (4) Any ~~church-owned~~ cemetery that is owned by a  
31 religious institution and that is exempt under paragraph

1 (1)(d), is located in a county with a population of at least  
2 1.3 million persons on July 1, 1996, and was selling  
3 merchandise and services to the religious institution's  
4 ~~church's~~ members prior to October 1, 1993, may establish one  
5 additional exempt cemetery in such county after December 31,  
6 2020, without establishing need under s. 497.201.

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

12 Section 2. Present subsections (31), (32), and (33) of  
13 section 497.005, Florida Statutes, 1998 Supplement, are  
14 redesignated as subsections (32), (33), and (34),  
15 respectively, and a new subsection (31) is added to that  
16 section, to read:

17 497.005 Definitions.--As used in this chapter:

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

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

24 497.103 Rulemaking authority of board and  
25 department.--

26 (4) The department shall examine the financial affairs  
27 of any cemetery company and any preneed sales  
28 certificateholder ~~and charge an examination fee as prescribed~~  
29 ~~in s. 497.431.~~

30 Section 4. Subsection (1) of section 497.213, Florida  
31 Statutes, is amended to read:

- 1           497.213 Annual license fees.--
- 2           (1) The department shall collect from each cemetery
- 3 company operating under the provisions of this chapter an
- 4 annual license fee as follows:
- 5           (a) For a cemetery with less than \$25,000 annual gross
- 6 sales.....\$250.
- 7           (b) For a cemetery with at least \$25,000 but less than
- 8 \$100,000 annual gross sales.....\$350.
- 9           (c) For a cemetery with annual gross sales of at least
- 10 \$100,000 but less than \$250,000.....\$600.
- 11           (d) For a cemetery with annual gross sales of at least
- 12 \$250,000 but less than \$500,000.....\$900.
- 13           (e) For a cemetery with annual gross sales of at least
- 14 \$500,000 but less than \$750,000.....\$1,350.
- 15           (f) For a cemetery with annual gross sales of at least
- 16 \$750,000 but less than \$1,000,000.....~~\$2,250~~\$1,750.
- 17           (g) For a cemetery with annual gross sales of at least
- 18 \$1,000,000 but less than \$5,000,000 ~~or more~~.....~~\$3,250~~\$2,650.
- 19           (h) For a cemetery with annual gross sales of
- 20 \$5,000,000 or more.....\$4,900.

21           Section 5. Subsection (1) of section 497.341, Florida

22 Statutes, is amended to read:

- 23           497.341 Burial without regard to race or color.--
- 24           (1) No cemetery company or other legal entity
- 25 conducting or maintaining any public or private cemetery may
- 26 deny burial space to any person because of race or color. A
- 27 cemetery company or other entity operating any cemetery may
- 28 designate parts of cemeteries or burial grounds for the
- 29 specific use of persons whose religious code requires
- 30 isolation. ~~Church~~ Cemeteries owned by religious institutions
- 31

1 may limit burials to ~~church~~ members of the religious  
2 institution and their families.

3 Section 6. Subsection (4) of section 497.405, Florida  
4 Statutes, is amended to read:

5 497.405 Certificate of authority required.--

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

19 Section 7. Section 497.407, Florida Statutes, is  
20 amended to read:

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

23 (1) An application to the board for a certificate of  
24 authority shall be accompanied by the statement and other  
25 matters described in this section in the form prescribed by  
26 the board. Annually thereafter, within 3 months after the end  
27 of its fiscal period, or within an extension of time therefor,  
28 as the board for good cause may grant, the person authorized  
29 to engage in the sale of preneed contracts shall file with the  
30 department a full and true statement of her or his financial  
31 condition, transactions, and affairs, prepared on a basis as

1 adopted by rule of the board, as of the preceding fiscal  
2 period or at such other time or times as the board may provide  
3 by rule, together with information and data which may be  
4 required by the board.

5 (2) The statement shall include the following:

6 (a) The types of preneed contracts proposed to be  
7 written.

8 (b) The name and address of the place of business of  
9 the person offering to write preneed contracts.

10 (c) Evidence that the person offering the statement:

11 1. Has the ability to discharge her or his liabilities  
12 as they become due in the normal course of business and has  
13 sufficient funds available during the calendar year to perform  
14 her or his obligations under her or his contract;

15 2. Has complied with the trust requirements for the  
16 funds received under contracts issued by herself or himself as  
17 hereinafter described;

18 3. Has disbursed interest, dividends, or accretions  
19 earned by trust funds, in accordance with this chapter and  
20 rules promulgated thereunder; and

21 4. Has complied with this chapter and any rules of the  
22 board and the department.

23 (d) Any other information considered necessary by the  
24 board to meet its responsibilities under this chapter.

25 (3) If the person is an individual, the statement  
26 shall be sworn by her or him; if a firm or association, by all  
27 members thereof; or, if a corporation, by any officer of the  
28 corporation.

29 (4) An application to the board for an initial  
30 certificate of authority must be accompanied by an application  
31 fee of \$250. Thereafter, each annual application for renewal

- 1 of a certificate of authority must be accompanied by the  
2 appropriate fee as follows:
- 3 (a) For a certificateholder with less than \$100,000 in  
4 gross sales during the immediate preceding year.....\$250.
- 5 (b) For a certificateholder with at least \$100,000 but  
6 less than \$250,000 in gross sales during the immediate  
7 preceding year.....\$400.
- 8 (c) For a certificateholder with at least \$250,000 but  
9 less than \$500,000 in gross sales during the immediate  
10 preceding year.....\$600.
- 11 (d) For a certificateholder with at least \$500,000 but  
12 less than \$750,000 in gross sales during the immediate  
13 preceding year.....\$1,000.
- 14 (e) For a certificateholder with at least \$750,000 but  
15 less than \$1,000,000 in gross sales during the immediate  
16 preceding year.....\$1,500.
- 17 (f) For a certificateholder with at least \$1,000,000  
18 but less than \$5,000,000 in gross sales during the immediate  
19 preceding year.....\$2,500.
- 20 (g) For a certificateholder with annual gross sales of  
21 \$5,000,000 or more.....\$4,900.

22 ~~The fee payable to the department for issuance of the original~~  
23 ~~certificate of authority and each annual renewal thereof shall~~  
24 ~~be set by the board at an amount not to exceed \$500 and shall~~  
25 ~~accompany each application for an original certificate and,~~  
26 ~~thereafter, each annual statement.~~

27  
28 Any person or entity that is part of a common business  
29 enterprise that has a certificate of authority issued pursuant  
30 to this section and elects to operate under a name other than  
31 that of the common business enterprise shall submit an



1 application on a form adopted by the board to become a branch  
2 registrant. Upon the approval of the board that such entity  
3 qualifies to sell preneed contracts under this chapter except  
4 for the requirements of subparagraph (2)(c)1. and if the  
5 certificateholder meets the requirements of such subparagraph,  
6 a branch registration shall be issued. Each branch registrant  
7 may operate under the certificate of authority of the common  
8 business enterprise upon the payment of a fee established by  
9 the board not to exceed \$150~~\$100~~ accompanying the application  
10 on April 1 annually. The fee shall be payable to the  
11 Regulatory Trust Fund ~~under the Division of Finance~~.

12 (5) Upon the board being satisfied that the statement  
13 and matters which may accompany it meet the requirements of  
14 this chapter and of its rules, it shall issue or renew the  
15 certificate of authority if upon investigation by the board it  
16 appears that the principals, including directors, officers,  
17 stockholders, employees, and agents of such person, are of  
18 good moral character and have reputations for fair dealing in  
19 business matters.

20 (6) The certificate of authority shall expire annually  
21 on June 1, unless renewed, or at such other time or times as  
22 the board may provide by rule.

23 (7) An application for an initial certificate of  
24 authority or for the annual renewal of the certificate shall  
25 disclose the existence of all preneed contracts for service or  
26 merchandise funded by any method other than a method permitted  
27 by this chapter, which contracts are known to the applicant  
28 and name the applicant or her or his business as the  
29 beneficiary upon the death of the purchaser of the preneed  
30 contract. Such disclosure shall include the name and address  
31 of the contract purchaser, the name and address of the

1 institution where such funds are deposited, and the number  
2 used by the institution to identify the account. With respect  
3 to contracts entered into before January 1, 1983, the board  
4 may not deny or refuse to renew a certificate of authority  
5 solely on the basis of such disclosure. The board may not  
6 require the purchaser of any such contract to liquidate the  
7 account if such account was established before July 1, 1965.  
8 The board may use the information disclosed to notify the  
9 contract purchaser and the institution in which such funds are  
10 deposited should the holder of a certificate of authority be  
11 unable to fulfill the requirements of the contract.

12 (8) On or before April 1 of each year, the  
13 certificateholder shall file with the board in the form  
14 prescribed by the board a full and true statement as to the  
15 activities of any trust established by it pursuant to this  
16 chapter for the preceding calendar year.

17 (9) In addition to any other penalty that may be  
18 provided for under this chapter, the board may levy a fine not  
19 to exceed \$50 a day for each day the certificateholder fails  
20 to file its annual statement, and the board may levy a fine  
21 not to exceed \$50 a day for each day the certificateholder  
22 fails to file the statement of activities of the trust. Upon  
23 notice to the certificateholder by the board that the  
24 certificateholder has failed to file the annual statement or  
25 the statement of activities of the trust, the  
26 certificateholder's authority to sell preneed contracts shall  
27 cease while such default continues. The board shall deposit  
28 all sums collected under this section to the credit of the  
29 Regulatory Trust Fund ~~under the Division of Finance.~~

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1           (10) To facilitate uniformity in financial statements  
2 and to facilitate department analysis, the board may by rule  
3 adopt a form for financial statements.

4           (11) The board may authorize the transfer of  
5 certificates of authority and establish fees for the transfer  
6 in an amount not to exceed \$100. Upon receipt of an  
7 application for transfer, the executive director may grant a  
8 temporary certificate of authority to the proposed transferee,  
9 based upon criteria established by the board by rule, which  
10 criteria shall promote the purposes of this chapter in  
11 protecting the consumer. Such a temporary certificate of  
12 authority shall expire at the conclusion of the next regular  
13 meeting of the board unless renewed by the board.

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

21           Section 8. Section 497.431, Florida Statutes, is  
22 amended to read:

23           497.431 Examinations and investigations.--The  
24 department shall, as often as it may deem necessary but at  
25 least once every 3 years, examine the business of any person  
26 writing preneed contracts and any guaranteeing organization  
27 existing under this chapter to the extent applicable. The  
28 examination ~~shall be at the expense of the person or~~  
29 ~~organization examined as provided in this section and shall be~~ be  
30 made by the designated representative or examiner of the  
31 department. The written report of each such examination, when

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

23 Section 9. (1) The department of Banking and Finance  
24 shall conduct a comprehensive review of the Florida Funeral  
25 and Cemetery Services Act, chapter 497, Florida Statutes. The  
26 department shall:

27 (a) Examine ways to increase competition in the  
28 cemetery industry and streamline the regulatory process under  
29 chapter 497, Florida Statutes.

30 (b) Examine ways to eliminate the determination of  
31 need for new cemeteries required by section 497.201, Florida

1 Statutes, and to address constitutional concerns, minimize  
2 negative impacts on existing cemeteries, and promote  
3 competition within the cemetery industry.

4 (c) Examine and determine the cost of providing  
5 perpetual care for cemeteries.

6 (d) Examine the statutory care and maintenance trust  
7 fund requirements to determine whether they are adequate to  
8 provide perpetual care for cemeteries.

9 (e) Examine the disciplinary powers of the department  
10 and the board to ensure clear and concise enforcement.

11 (f) Examine other sections of chapter 497, Florida  
12 Statutes, as necessary.

13 (g) Report findings and make recommendations  
14 concerning solutions to problems identified by the department,  
15 including proposed legislation deemed advisable to implement  
16 recommended solutions.

17 (h) Conduct a minimum of two public workshops before  
18 December 1, 1999, to receive public comment.

19 (2) The department shall produce a preliminary report  
20 by December 1, 1999, and a final report by January 15, 2000,  
21 detailing its findings and recommendations. The department  
22 shall conduct a minimum of one public workshop between  
23 December 1, 1999 and January 15, 2000, to solicit public  
24 testimony concerning the preliminary draft. A copy of the  
25 final report shall be submitted to the President and the  
26 Minority Leader of the Senate, and the Speaker and Minority  
27 Leader of the House of Representatives. Copies shall also be  
28 furnished to the Governor and the Office of Program Policy  
29 Analysis and Government Accountability.

30 (3) This section shall take effect upon this act  
31 becoming a law.

