

By the Committee on Banking and Insurance; and Senator Klein

311-1862-99

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 authorizing the Department of Banking and
9 Finance and the Board of Funeral and Cemetery
10 Services to adopt rules to allow for electronic
11 submission of applications, documents, and fees
12 and to provide for certification of compliance
13 in lieu of submission of documents; eliminating
14 a reference to an examination fee; amending ss.
15 497.117, 497.131, F.S.; revising terminology
16 designating a trust fund; amending s. 497.213,
17 F.S.; increasing annual license fees for
18 certain cemeteries; amending s. 497.245, F.S.;
19 eliminating reference to annual examination
20 fees; amending ss. 497.341, 497.405, F.S.;
21 revising terminology relating to cemeteries
22 owned by a religious institution; amending s.
23 497.407, F.S.; providing initial application
24 and renewal fees for a certificate of authority
25 to sell a preneed contract; revising
26 terminology designating a trust fund; amending
27 s. 497.431, F.S.; eliminating the fee charged
28 to examine the business of any person writing
29 preneed contracts and any guaranteeing
30 organization; revising the expenses the person
31 or organization being examined is responsible

1 for paying in connection with an examination;
2 amending s. 497.435, F.S.; revising terminology
3 designating a trust fund; amending s. 497.439,
4 F.S.; providing for submission of an
5 application for registration as a preneed sales
6 agent, with application fee, in a form
7 prescribed by department rule; requiring the
8 department and the board to conduct a review of
9 ch. 497, F.S., the Florida Funeral and Cemetery
10 Services Act, and to hold public workshops and
11 produce preliminary and final reports thereon;
12 authorizing the department to contract with
13 consultants for certain services related to
14 such review; providing an appropriation;
15 providing effective dates.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Subsections (1), (4), and (5) of section
20 497.003, Florida Statutes, are amended to read:

21 497.003 Cemeteries; exemption; investigation and
22 mediation.--

23 (1) The provisions of this chapter relating to
24 cemeteries and all rules adopted pursuant thereto shall apply
25 to all cemeteries except for:

26 (a) Religious institution ~~Church~~ cemeteries of less
27 than 5 acres which provide only single-level ground burial.

28 (b) County and municipal cemeteries.

29 (c) Community and nonprofit association cemeteries
30 which provide only single-level ground burial and do not sell
31 burial spaces or burial merchandise.

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

3 (e) Cemeteries beneficially owned and operated since
4 July 1, 1915, by a fraternal organization or its corporate
5 agent.

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

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

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

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

9 (5) Any religious-institution-owned ~~church-owned~~
10 cemetery exempt under subsection (1), except those cemeteries
11 qualifying under paragraph (1)(d), which becomes affiliated
12 with a commercial enterprise must meet the requirements of s.
13 497.201.

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

18 497.005 Definitions.--As used in this chapter:

19 (31) "Religious institution" means an organization
20 formed solely for religious purposes which has qualified for
21 exemption from federal income tax as an exempt organization
22 under the provisions of s. 501(c)(3) of the Internal Revenue
23 Code of 1986, as amended.

24 Section 3. Subsections (1) and (4) of section 497.103,
25 Florida Statutes, 1998 Supplement, are amended to read:

26 497.103 Rulemaking authority of board and
27 department.--

28 (1) The board has authority to adopt rules pursuant to
29 ss. 120.536(1) and 120.54 to implement provisions of this
30 chapter conferring duties upon it. The department may adopt
31 rules pursuant to ss. 120.536(1) and 120.54 to administer

1 provisions of this chapter conferring duties upon it. The
2 board or the department may also adopt rules to allow for the
3 electronic submission of any applications, documents, or fees
4 required by this chapter. The board or the department may
5 adopt rules to authorize the board or the department to accept
6 certification of compliance with certain requirements of this
7 chapter in lieu of requiring submission of the documents.

8 (4) The department shall examine the financial affairs
9 of any cemetery company and any preneed sales
10 certificateholder ~~and charge an examination fee as prescribed~~
11 ~~in s. 497.431.~~

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

14 497.117 Legal and investigative services.--

15 (1) The Department of Legal Affairs shall provide
16 legal services to the board within the Department of Banking
17 and Finance, but the primary responsibility of the Department
18 of Legal Affairs shall be to represent the interests of the
19 citizens of the state by vigorously counseling the board with
20 respect to its obligations under the laws of the state.
21 Subject to the prior approval of the Attorney General, the
22 board may retain independent legal counsel to provide legal
23 advice to the board on a specific matter. Fees and costs of
24 such counsel shall be paid from the Regulatory Trust Fund of
25 the Department of Banking and Finance.

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

28 497.131 Disciplinary proceedings.--

29 (4) The determination as to whether probable cause
30 exists shall be made by majority vote of the probable cause
31 panel of the board. The board shall provide, by rule, that the

1 determination of probable cause shall be made by a panel of
2 its members or by the department. The board may provide, by
3 rule, for multiple probable cause panels composed of at least
4 two members. The board may provide, by rule, that one or more
5 members of the panel or panels may be a former board member.
6 The length of term or repetition of service of any such former
7 board member on a probable cause panel may vary according to
8 the direction of the board when authorized by board rule. Any
9 probable cause panel must include one of the board's former or
10 present consumer members, if one is available, willing to
11 serve, and is authorized to do so by the board chair. Any
12 probable cause panel must include a present board member. Any
13 probable cause panel must include a former or present
14 professional board member. However, any former professional
15 board member serving on the probable cause panel must hold an
16 active valid license for that profession. All probable cause
17 proceedings conducted pursuant to the provisions of this
18 section are exempt from the provisions of s. 286.011 and s.
19 24(b), Art. I of the State Constitution. The probable cause
20 panel may make a reasonable request, and upon such request the
21 department shall provide such additional investigative
22 information as is necessary to the determination of probable
23 cause. A request for additional investigative information
24 shall be made within 15 days from the date of receipt by the
25 probable cause panel of the investigative report of the
26 department. The probable cause panel shall make its
27 determination of probable cause within 30 days after receipt
28 by it of the final investigative report of the department. The
29 Comptroller may grant extensions of the 15-day and the 30-day
30 time limits. If the probable cause panel does not find
31 probable cause within the 30-day time limit, as may be

1 extended, or if the probable cause panel finds no probable
2 cause, the department may determine, within 10 days after the
3 panel fails to determine probable cause or 10 days after the
4 time limit has elapsed, that probable cause exists. If the
5 probable cause panel finds that probable cause exists, it
6 shall direct the department to file a formal complaint against
7 the licensee. The department shall follow the directions of
8 the probable cause panel regarding the filing of a formal
9 complaint. If directed to do so, the department shall file a
10 formal complaint against the subject of the investigation and
11 prosecute that complaint pursuant to the provisions of chapter
12 120. However, the department may decide not to prosecute the
13 complaint if it finds that probable cause had been
14 improvidently found by the panel. In such cases, the
15 department shall refer the matter to the board. The board may
16 then file a formal complaint and prosecute the complaint
17 pursuant to the provisions of chapter 120. The department
18 shall also refer to the board any investigation or
19 disciplinary proceeding not before the Division of
20 Administrative Hearings pursuant to chapter 120 or otherwise
21 completed by the department within 1 year after the filing of
22 a complaint. A probable cause panel or the board may retain
23 independent legal counsel, employ investigators, and continue
24 the investigation as it deems necessary; all costs thereof
25 shall be paid from the department's Regulatory Trust Fund. All
26 proceedings of the probable cause panel shall be exempt from
27 the provisions of s. 120.525.

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

30 497.213 Annual license fees.--

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

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

6 (b) For a cemetery with at least \$25,000 but less than
7 \$100,000 annual gross sales.....\$350.

8 (c) For a cemetery with annual gross sales of at least
9 \$100,000 but less than \$250,000.....\$600.

10 (d) For a cemetery with annual gross sales of at least
11 \$250,000 but less than \$500,000.....\$900.

12 (e) For a cemetery with annual gross sales of at least
13 \$500,000 but less than \$750,000.....\$1,350.

14 (f) For a cemetery with annual gross sales of at least
15 \$750,000 but less than \$1,000,000.....\$2,250~~\$1,750~~.

16 (g) For a cemetery with annual gross sales of at least
17 \$1,000,000 but less than \$5,000,000 ~~or more~~.....\$3,250~~\$2,650~~.

18 (h) For a cemetery with annual gross sales of
19 \$5,000,000 or more.....\$4,900.

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

22 497.245 Care and maintenance trust fund, percentage of
23 payments for burial rights to be deposited.--

24 (2) Deposits to the care and maintenance trust fund
25 shall be made by the cemetery company not later than 30 days
26 following the close of the calendar month in which any payment
27 was received; however, when such payments are received in
28 installments, the percentage of the installment payment placed
29 in trust must be identical to the percentage which the payment
30 received bears to the total cost for the burial rights. Trust
31 income may be used to pay for all usual and customary services

1 for the operation of a trust account, including, but not
2 limited to: reasonable trustee and custodian fees, investment
3 adviser fees, allocation fees, and taxes, ~~and annual~~
4 ~~examination fees~~. If the net income is not sufficient to pay
5 the fees and other expenses, the fees and other expenses shall
6 be paid by the cemetery company. Capital gains taxes shall be
7 paid from the corpus.

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

10 497.341 Burial without regard to race or color.--

11 (1) No cemetery company or other legal entity
12 conducting or maintaining any public or private cemetery may
13 deny burial space to any person because of race or color. A
14 cemetery company or other entity operating any cemetery may
15 designate parts of cemeteries or burial grounds for the
16 specific use of persons whose religious code requires
17 isolation. Religious institution ~~Church~~ cemeteries may limit
18 burials to ~~church~~ members of the religious institution and
19 their families.

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

22 497.405 Certificate of authority required.--

23 (4) The provisions of this section do not apply to
24 religious-institution-owned ~~church-owned~~ cemeteries exempt
25 under s. 497.003(1)(d), in counties with a population of at
26 least 960,000 persons on July 1, 1996, with respect to the
27 sale to the religious institution's ~~church's~~ members and their
28 families of interment rights, mausoleums, crypts, cremation
29 niches, vaults, liners, urns, memorials, vases, foundations,
30 memorial bases, floral arrangements, monuments, markers,
31 engraving, and the opening and closing of interment rights,

1 mausoleums, crypts and cremation niches, if such cemeteries
2 have engaged in the sale of preneed contracts prior to October
3 1, 1993, and maintain a positive net worth at the end of each
4 fiscal year of the cemetery.

5 Section 10. Subsections (4), (9), and (12) of section
6 497.407, Florida Statutes, are amended to read:

7 497.407 Certificate of authority; annual statement;
8 renewal; transfer.--

9 (4)(a) An application to the board for an initial
10 certificate of authority shall be accompanied by an
11 application fee of \$500. Thereafter, each annual application
12 for renewal of a certificate of authority shall be accompanied
13 by the appropriate fee as follows:

14 1. For a certificateholder with no preneed contract
15 sales during the immediately preceding year.....\$300.

16 2. For a certificateholder with at least 1 but fewer
17 than 50 preneed contract sales during the immediately
18 preceding year.....\$400.

19 3. For a certificateholder with at least 50 but fewer
20 than 250 preneed contract sales during the immediately
21 preceding year.....\$500.

22 4. For a certificateholder with at least 250 but fewer
23 than 1,000 preneed contract sales during the immediately
24 preceding year.....\$850.

25 5. For a certificateholder with at least 1,000 but
26 fewer than 2,500 preneed contract sales during the immediately
27 preceding year.....\$1,500.

28 6. For a certificateholder with at least 2,500 but
29 fewer than 5,000 preneed contract sales during the immediately
30 preceding year.....\$2,500.

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1 7. For a certificateholder with at least 5,000 but
2 fewer than 15,000 preneed contract sales during the
3 immediately preceding year.....\$6,000.

4 8. For a certificateholder with at least 15,000 but
5 fewer than 30,000 preneed contract sales during the
6 immediately preceding year.....\$12,500.

7 9. For a certificateholder with 30,000 preneed
8 contract sales or more.....\$18,500.

9 ~~(b) The fee payable to the department for issuance of~~
10 ~~the original certificate of authority and each annual renewal~~
11 ~~thereof shall be set by the board at an amount not to exceed~~
12 ~~\$500 and shall accompany each application for an original~~
13 ~~certificate and, thereafter, each annual statement. Any person~~
14 or entity that is part of a common business enterprise that
15 has a certificate of authority issued pursuant to this section
16 and elects to operate under a name other than that of the
17 common business enterprise shall submit an application on a
18 form adopted by the board to become a branch registrant. Upon
19 the approval of the board that such entity qualifies to sell
20 preneed contracts under this chapter except for the
21 requirements of subparagraph (2)(c)1. and if the
22 certificateholder meets the requirements of such subparagraph,
23 a branch registration shall be issued. Each branch registrant
24 may operate under the certificate of authority of the common
25 business enterprise upon the payment of a fee established by
26 the board not to exceed \$150~~\$100~~ accompanying the application
27 on April 1 annually. The fee shall be payable to the
28 department's Regulatory Trust Fund ~~under the Division of~~
29 Finance.

30 (9) In addition to any other penalty that may be
31 provided for under this chapter, the board may levy a fine not

1 to exceed \$50 a day for each day the certificateholder fails
2 to file its annual statement, and the board may levy a fine
3 not to exceed \$50 a day for each day the certificateholder
4 fails to file the statement of activities of the trust. Upon
5 notice to the certificateholder by the board that the
6 certificateholder has failed to file the annual statement or
7 the statement of activities of the trust, the
8 certificateholder's authority to sell preneed contracts shall
9 cease while such default continues. The board shall deposit
10 all sums collected under this section to the credit of the
11 department's Regulatory Trust Fund ~~under the Division of~~
12 ~~Finance~~.

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

20 Section 11. Section 497.431, Florida Statutes, is
21 amended to read:

22 497.431 Examinations and investigations.--The
23 department shall, as often as it may deem necessary but at
24 least once every 3 years, examine the business of any person
25 writing preneed contracts and any guaranteeing organization
26 existing under this chapter to the extent applicable. The
27 examination shall be ~~at the expense of the person or~~
28 ~~organization examined as provided in this section and shall be~~
29 made by the designated representatives or examiners
30 ~~representative or examiner~~ of the department. The written
31 report of each such examination, when completed, shall be

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

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

25 497.435 Administrative fine in lieu of revocation or
26 suspension of certificate of authority.--

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

29 Section 13. Subsection (7) of section 497.439, Florida
30 Statutes, is amended to read:

31 497.439 Preneed sales agents.--

1 (7) An application for registration as a preneed sales
2 agent shall be submitted to the department with an application
3 fee of \$100 ~~by certified mail, return receipt requested, by~~
4 the certificateholder ~~in~~ on a form that has been prescribed by
5 department rule and approved by the board. Such application
6 ~~and~~ shall contain, at a minimum, the following:

7 (a) The name, address, social security number, and
8 date of birth of the applicant and such other information as
9 the board may reasonably require of the applicant.

10 (b) The name, address, and license number of the
11 sponsoring certificateholder.

12 (c) A representation, signed by the applicant, that
13 the applicant meets the requirements set forth in subsection
14 (6).

15 (d) A representation, signed by the certificateholder,
16 that the applicant is authorized to offer, sell, and sign
17 preneed contracts on behalf of the certificateholder, and that
18 the certificateholder has trained the applicant in the
19 provisions of this chapter relating to preneed sales as
20 determined by the board, the provisions of the
21 certificateholder's preneed contract, and the nature of the
22 merchandise, services, or burial rights sold by the
23 certificateholder.

24 (e) A statement indicating whether the applicant has
25 any type of working relationship with any other
26 certificateholder or insurance company.

27 Section 14. (1) The Department of Banking and Finance
28 and the Board of Funeral and Cemetery Services shall conduct a
29 review of chapter 497, Florida Statutes, the Florida Funeral
30 and Cemetery Services Act, the scope of which shall be
31 determined by the department and the board. In conducting

1 their review, the department and the board shall hold at least
2 two public workshops prior to April 1, 2000, in order to
3 receive public comment.

4 (2) The department and the board shall produce a
5 preliminary report on or before April 1, 2000, and a final
6 report by August 15, 2000, detailing their findings and
7 recommendations. The department and the board shall hold at
8 least one public workshop between the date the preliminary
9 report is issued and August 15, 2000, to solicit public
10 testimony concerning the preliminary draft. A copy of the
11 final report shall be presented to the President and the
12 Minority Leader of the Senate, the Speaker and the Minority
13 Leader of the House of Representatives, the Governor, and the
14 Office of Program Policy Analysis and Government
15 Accountability.

16 (3) The department is authorized to contract with such
17 consultants as are necessary to ascertain the costs of
18 perpetual care and maintenance for new and existing
19 cemeteries, assess the impact on such costs of eliminating the
20 need requirement contained in chapter 497, Florida Statutes,
21 and recommend ways to minimize any negative impact on such
22 costs caused by eliminating the need requirement.

23 (4) This section shall take effect upon this act's
24 becoming a law.

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

29 Section 16. Except as otherwise provided in this act,
30 this act shall take effect July 1, 1999.

31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1698
4 Revises the definition of "religious institution" as an
5 organization formed for religious purposes which has qualified
6 as an exempt organization under s. 501(c)(3) of the IRS code.
7
8 Allows the Board of Funeral and Cemetery Services (board) or
9 the Department of Banking and Finance (department) to adopt
10 rules to allow for electronic submission of any applications,
11 documents, or fees. Authorizes the board or department to
12 accept a certification of compliance in lieu of requiring the
13 actual documents.
14
15 Requires a \$500 initial application fee for a certificate of
16 authority for preneed sales and revises the annual renewal fee
17 schedule based on the number of preneed contracts sold in the
18 previous year.
19
20 Deletes the requirement that preneed sales agents submit their
21 application fees via certified mail.
22
23 Revises the bill's provisions directing the board and the
24 department to conduct a review of chapter 497, extending the
25 time for the final report and requiring a broader scope of
26 review. The committee substitute also authorizes the
27 department to contract with consultants to conduct an
28 actuarial study to ascertain the costs of perpetual care and
29 maintenance for new and existing cemeteries, assess the impact
30 on such costs of eliminating the need requirement contained in
31 chapter 497, and recommend ways to minimize negative impact on
the costs caused by eliminating the need requirement.