

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 196

SPONSOR: Senate Regulated Industries Committee

SUBJECT: Funeral & Cemetery Services

DATE: January 20, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>BI</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

As recommended by Interim Project Report 98-39 by the Senate Regulated Industries Committee, the bill requires funeral establishments, direct disposal establishments, cinerators, and cemeteries to disclose ownership information to prospective purchasers of merchandise or services and to disclose ownership information in all advertisements or contracts for the purchase of merchandise or services. The bill also requires cemeteries to identify the owners of the business in each application for a license or license renewal (funeral and direct disposal establishments and cinerators currently are required to provide this information). The bill also requires state agencies which receive consumer complaints about the funeral or cemetery industry to coordinate the method in which they keep records of and report data on such complaints.

This bill substantially amends the following sections of the Florida Statutes: 470.034, 497.201, 497.213, and 497.333. The bill also creates an unnumbered section of the statutes.

II. Present Situation:

Interim Project Report 98-39

During the 1998-99 interim, staff of the Senate Regulated Industries Committee conducted a study on funeral and cemetery regulation. In the project report, staff found that global corporations are acquiring increasingly greater shares of the funeral and cemetery services market. The consolidation of the funeral and cemetery industry in Florida has been characterized as "creeping expansion" whereby a larger corporation buys one small or independent business at a time until the corporation's acquisitions represent a substantial presence in a region.

When a larger corporation acquires or merges with an established business, it frequently continues operating under the former business name, often with the same staff, and at times with the prior owner acting as manager for a transition period. As a result, a consumer may unwittingly deal with a particular company or may obtain prices from different establishments and find very little, if

any, competitive pricing because, unknown to the consumer, the establishments are all owned by the same company. The report found that unique circumstances surrounding the purchase of funeral and cemetery services and products may warrant explicit disclosure requirements regarding corporate ownership on letterhead, contracts, signs or advertisements so that consumers can make informed decisions about whether and from whom they purchase funeral and cemetery services and products.

An additional concern identified in the report is the potential for anti-competitive effects. The small amount of assets involved in most individual buy-outs do not automatically trigger any federal or state anti-trust laws. Additionally, neither the Department of Business and Professional Regulation nor the Department of Banking and Finance currently is required to collect comprehensive data in a manner that would verify geographical presence and market share of large death care corporations in Florida. The report found that more data collection and research by the respective regulatory agencies would help to determine whether a monopoly environment exists and whether it is reducing the variety and quality of available services or causing higher costs to consumers.

Public Information on Business Ownership

Florida law does not require disclosure to the public of any information as to ownership of funeral establishments, direct disposal establishments, cinerator facilities, or cemeteries.

Agency Information on Business Ownership - Changes in Ownership

Section 497.201, F.S., provides for establishing and licensing a cemetery. A person seeking to establish and operate a cemetery must first obtain a license from the Department of Banking and Finance. To obtain the license, the person must file a license application, the only content requirement for which is that it state the exact location of the proposed cemetery, and must provide a financial statement signed by all officers of the company.

Section 497.213, F.S., requires that an application for license renewal be made on or before December 31 of each year in the case of an existing cemetery company, or before any sale of cemetery property in the case of a new cemetery company or a change of ownership.

Similar statutes on licensing of funeral establishments and direct disposal establishments and on registration of cinerator facilities require that these businesses identify the owner of the establishment or facility in the license application. These statutes require that each application for a license identify every person who owns more than a 10% interest in the establishment or the business or corporation that owns the establishment. See ss. 470.024(13), 470.021(6), and 470.025(10), F.S., respectively.

As to changes in ownership, section 497.205(2), F.S., requires that any person who wishes to purchase or acquire control of an existing licensed cemetery apply to the Board of Funeral and Cemetery Services for approval of the proposed change in ownership. The statutes on funeral establishments, direct disposal establishments, and cinerator facilities require reporting of a change in ownership, at ss. 470.024(11), 470.021(8), and 470.025(4), F.S., respectively.

III. Effect of Proposed Changes:

Public Information on Business Ownership

The bill amends s. 470.034, F.S., to require licensees and registrants under Chapter 470, for example funeral directors, funeral home establishments, and direct disposers, to provide disclosures identifying the owner of the business. The disclosure: must be made to a prospective purchaser of merchandise or services before a purchase; must be made in all advertisements for merchandise or services; and must be included in each contract for sale of merchandise or services. The disclosures must be clear and conspicuous. Failure to provide a disclosure is made grounds for disciplinary action. Additionally, if a contract does not contain the required disclosure, it is voidable by the purchaser. The bill's definition of the term "owner" includes, but is not limited to, a publicly traded corporation owning more than 10 percent of a licensee or registrant which will provide the merchandise or services.

The bill amends s. 497.333, F.S., to require that each seller of burial rights, merchandise, or services pursuant to Chapter 497 make the same disclosures discussed above.

Agency Information on Business Ownership

The bill amends ss. 497.201 and 497.213, F.S., to require each application for a license to operate a cemetery or for a license renewal to identify the business or corporation that owns or will own the cemetery.

Agency Processing of Consumer Complaints

The bill requires the Department of Business and Professional Regulation, the Department of Banking and Finance, and the Department of Agriculture and Consumer Services to coordinate the method in which they keep records of and report data on consumer complaints about the funeral and cemetery industries. In particular, the agencies are to coordinate the categories of complaints and the format used to organize the data.

Effective Date

The bill takes effect on October 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill should assist consumers in identifying the true owner of businesses, which may facilitate obtaining price information from competing businesses.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill reflects the recommendations contained in Interim Project Report 98-39 by the Senate Regulated Industries Committee.

The bill provides adequate and appropriate standards and guidelines to direct the agency's implementation of the proposed legislation.

VIII. Amendments:

None.