

By the Committee on Regulated Industries

315-742A-99

1 A bill to be entitled
2 An act relating to funeral and cemetery
3 services; amending s. 470.034, F.S.; requiring
4 licensees and registrants to give notice to
5 prospective purchasers of the ownership of the
6 business providing the merchandise or services;
7 requiring disclosures in advertisements and
8 contracts; providing for voidability of
9 contracts; amending ss. 497.201, 497.213, F.S.;
10 requiring applications for cemetery licenses
11 and license renewals to contain ownership
12 information; amending s. 497.333, F.S.;
13 requiring sellers of burial rights,
14 merchandise, or services to give notice to
15 prospective purchasers of the ownership of the
16 business providing the merchandise or services;
17 requiring disclosures in advertisements and
18 contracts; providing for voidability of
19 contracts; requiring specified state agencies
20 to coordinate recordkeeping and reporting of
21 certain data; providing an effective date.

23 Be It Enacted by the Legislature of the State of Florida:

25 Section 1. Section 470.034, Florida Statutes, is
26 amended to read:

27 470.034 Disclosure of information to public.--If a
28 licensee or registrant offers to provide services to the
29 public, she or he shall be subject to disciplinary action as
30 provided in this chapter if she or he:

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1 (1) Fails to reasonably provide by telephone, upon
2 request, accurate information regarding the retail prices of
3 funeral merchandise and services offered for sale by that
4 licensee or registrant.

5 (2) Fails to fully disclose all of her or his
6 available services and merchandise prior to the selection of a
7 casket. The full disclosure required shall identify what is
8 included in the funeral or direct disposition and the prices
9 of all services and merchandise provided by the licensee or
10 registrant. Full disclosure shall also be made in the case of
11 a funeral or direct disposition with regard to the use of
12 funeral merchandise which is not to be disposed of with the
13 body, and written permission shall be obtained from the
14 purchaser.

15 (3) Makes any false or misleading statements of the
16 legal requirement as to the conditions under which
17 preservation of a dead human body is required or as to the
18 necessity of a casket or outer burial container.

19 (4) Fails to disclose, when such disclosure is
20 desired, the components of the prices for alternatives such
21 as:

22 (a) Graveside service.

23 (b) Direct disposition.

24 (c) Body donation without any rites or ceremonies
25 prior to the delivery of the body and prices of service if
26 there are to be such after the residue has been removed
27 following the use thereof.

28 (5) Fails to include in each advertisement for
29 merchandise or services a clear and conspicuous statement
30 identifying the owner of the business that would provide the
31 merchandise or services. As used in this subsection, the term

1 "owner" includes, but is not limited to, a publicly traded
2 corporation owning more than 10 percent of a licensee or
3 registrant.

4 (6) Fails to provide to each prospective purchaser of
5 merchandise or services, prior to the purchase, a clear and
6 conspicuous written statement identifying the owner of the
7 business that would provide the merchandise or services. As
8 used in this subsection, the term "owner" includes, but is not
9 limited to, a publicly traded corporation owning more than 10
10 percent of a licensee or registrant.

11 (7) Fails to include in each contract for purchase of
12 merchandise or services a clear and conspicuous statement
13 identifying the owner of each business that will provide the
14 merchandise or services. Additionally, if a contract does not
15 contain this disclosure, the contract is voidable by the
16 purchaser. In any action based on this subsection, the
17 licensee or registrant has the burden of proof to show that
18 the disclosure was made. As used in this subsection, the term
19 "owner" includes, but is not limited to, a publicly traded
20 corporation owning more than 10 percent of a licensee or
21 registrant.

22 Section 2. Subsection (2) of section 497.201, Florida
23 Statutes, is amended to read:

24 497.201 Cemetery companies; license; application;
25 fee.--

26 (2) The department may require any person desiring to
27 establish a cemetery company who applies for a license to
28 provide any information reasonably necessary to make a
29 determination of the applicant's eligibility for licensure.
30 Any person desiring to establish a cemetery company shall
31 first:

1 (a) File an application that ~~which~~, states the exact
2 location of the proposed cemetery, which site shall contain
3 not less than 15 contiguous acres, and that identifies the
4 business or corporation that will own the cemetery; provide a
5 financial statement signed by all officers of the company that
6 attests ~~which attest~~ to a net worth of at least \$50,000, which
7 net worth must be continuously maintained as a condition of
8 licensure; and pay an application fee of \$5,000;

9 (b) Create a legal entity; and

10 (c) Demonstrate to the satisfaction of the board that
11 the applicant possesses the ability, experience, financial
12 stability, and integrity to operate a cemetery.

13 Section 3. Section 497.213, Florida Statutes, is
14 amended to read:

15 497.213 Annual license fees.--

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

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

21 (b) For a cemetery with at least \$25,000 but less than
22 \$100,000 annual gross sales.....\$350.

23 (c) For a cemetery with annual gross sales of at least
24 \$100,000 but less than \$250,000.....\$600.

25 (d) For a cemetery with annual gross sales of at least
26 \$250,000 but less than \$500,000.....\$900.

27 (e) For a cemetery with annual gross sales of at least
28 \$500,000 but less than \$750,000.....\$1,350.

29 (f) For a cemetery with annual gross sales of at least
30 \$750,000 but less than \$1,000,000.....\$1,750.

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1 (g) For a cemetery with annual gross sales of
2 \$1,000,000 or more.....\$2,650.

3 (2) An application for license renewal shall be
4 submitted, along with the applicable license fee, on or before
5 December 31 each year in the case of an existing cemetery
6 company and before any sale of cemetery property in the case
7 of a new cemetery company or a change of ownership or control
8 pursuant to ss. 497.205 and 497.209. The application must
9 identify the business or corporation that owns or will own the
10 cemetery.If the renewal application and fee are not received
11 by December 31, the department shall collect a penalty in the
12 amount of \$200 per month or fraction of a month for each month
13 delinquent. For the purposes of this subsection, a renewal
14 application and fee submitted by mail shall be considered
15 timely submitted and received if postmarked by December 31 of
16 the applicable year.

17 Section 4. Section 497.333, Florida Statutes, is
18 amended to read:

19 497.333 Disclosure of information to public.--A
20 licensee offering to provide burial rights, merchandise, or
21 services to the public shall:

22 (1) Provide by telephone, upon request, accurate
23 information regarding the retail prices of burial merchandise
24 and services offered for sale by the licensee.

25 (2) Fully disclose all regularly offered services and
26 merchandise prior to the selection of burial services or
27 merchandise. The full disclosure required shall identify the
28 prices of all burial rights, services, and merchandise
29 provided by the licensee.

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1 (3) Not make any false or misleading statements of the
2 legal requirement as to the necessity of a casket or outer
3 burial container.

4 (4) Provide a good faith estimate of all fees and
5 costs the customer will incur to use any burial rights,
6 merchandise, or services purchased.

7 (5) Provide to the customer, upon request, a current
8 copy of the bylaws of the licensee.

9 (6) Provide to the customer, upon the purchase of any
10 burial right, merchandise, or service, a written contract, the
11 form of which has been approved by the board.

12 (a) The written contract shall be completed as to all
13 essential provisions prior to the signing of the contract by
14 the customer.

15 (b) The written contract shall provide an itemization
16 of the amounts charged for all services, merchandise, and
17 fees, which itemization shall be clearly and conspicuously
18 segregated from everything else on the written contract.

19 (c) A description of the merchandise covered by the
20 contract to include, when applicable, model, manufacturer, and
21 other relevant specifications.

22 (7) Provide the licensee's policy on cancellation and
23 refunds to each customer.

24 (8) In a manner established by rule of the board,
25 provide on the signature page, clearly and conspicuously in
26 boldfaced 10-point type or larger, the following:

27 (a) The words "purchase price."

28 (b) The amount to be trusted.

29 (c) The amount to be refunded upon contract
30 cancellation.

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1 (d) The amounts allocated to merchandise, services,
2 and cash advances.

3 (e) The toll-free number of the department which is
4 available for questions or complaints.

5 (f) A statement that the purchaser shall have 30 days
6 from the date of execution of contract to cancel the contract
7 and receive a total refund of all moneys paid.

8 (9) Each seller of burial rights, merchandise, or
9 services shall include in each advertisement for burial
10 rights, merchandise, or services a clear and conspicuous
11 statement identifying the owner of the business that would
12 provide the burial rights, merchandise, or services. As used
13 in this subsection, the term "owner" includes, but is not
14 limited to, a publicly traded corporation owning more than 10
15 percent of a licensee or registrant providing such rights,
16 merchandise, or services.

17 (10) Each seller of burial rights, merchandise, or
18 services shall provide to each prospective purchaser, prior to
19 the purchase, a clear and conspicuous written statement
20 identifying the owner of the business that would provide the
21 burial rights, merchandise, or services. As used in this
22 subsection, the term "owner" includes, but is not limited to,
23 a publicly traded corporation owning more than 10 percent of a
24 licensee or registrant providing such rights, merchandise, or
25 services.

26 (11) Each seller of burial rights, merchandise, or
27 services shall include in each contract for purchase of burial
28 rights, merchandise, or services, a clear and conspicuous
29 statement identifying the owner of each business that will
30 provide the burial rights, merchandise, or services.
31 Additionally, if a contract does not contain this disclosure,

1 the contract is voidable by the purchaser. In any action based
2 on this subsection, the licensee or registrant has the burden
3 of proof to show that the disclosure was made. As used in this
4 subsection, the term "owner" includes, but is not limited to,
5 a publicly traded corporation owning more than 10 percent of a
6 licensee or registrant providing such rights, merchandise, or
7 services.

8 Section 5. In order to provide more useful information
9 to the Legislature and the public concerning consumer
10 complaints about the funeral and cemetery industries, the
11 Department of Business and Professional Regulation, the
12 Department of Banking and Finance, and the Department of
13 Agriculture and Consumer Services are to coordinate the method
14 in which they keep records of and report data on such
15 complaints, including the categories and the format used to
16 organize this data.

17 Section 6. This act shall take effect October 1, 1999.

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19 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
20 COMMITTEE SUBSTITUTE FOR
21 SB 196

22 The Committee Substitute for Senate Bill 196 deletes
23 provisions requiring advance notice of intent to acquire a
24 business and inserts a provision regarding specified state
agencies to coordinate record keeping and reporting of data on
consumer complaints.