

By Senator Klein

28-81A-00

See HB

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 and 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 and 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 preneed contracts; revising terminology  
26          designating a trust fund; amending s. 497.431,  
27          F.S.; eliminating the fee charged to examine  
28          the business of any person writing preneed  
29          contracts and any guaranteeing organization;  
30          revising the expenses that the person or  
31          organization being examined is responsible for

1           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 and approved by  
8           the board; providing an effective date.

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

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12           Section 1. Subsections (1), (4), and (5) of section  
13 497.003, Florida Statutes, are amended to read:

14           497.003 Cemeteries; exemption; investigation and  
15 mediation.--

16           (1) The provisions of this chapter relating to  
17 cemeteries and all rules adopted pursuant thereto shall apply  
18 to all cemeteries except for:

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

21           (b) County and municipal cemeteries.

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

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

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

30           (f) A columbarium consisting of less than one-half  
31 acre which is owned by and immediately contiguous to an

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

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

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

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

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

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

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

11           (31) "Religious institution" means an organization  
12 formed solely for religious purposes which has qualified for  
13 exemption from federal income tax as an exempt organization  
14 under the provisions of s. 501(c)(3) of the Internal Revenue  
15 Code of 1986, as amended.

16           Section 3. Subsections (1) and (4) of section 497.103,  
17 Florida Statutes, are amended to read:

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

20           (1) The board has authority to adopt rules pursuant to  
21 ss. 120.536(1) and 120.54 to implement provisions of this  
22 chapter conferring duties upon it. The department may adopt  
23 rules pursuant to ss. 120.536(1) and 120.54 to administer  
24 provisions of this chapter conferring duties upon it. The  
25 board or the department may also adopt rules to allow for the  
26 electronic submission of any applications, documents, or fees  
27 required by this chapter. The board or the department may  
28 adopt rules to authorize the board or the department to accept  
29 certification of compliance with certain requirements of this  
30 chapter in lieu of requiring submission of the documents.

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

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

7           497.117 Legal and investigative services.--

8           (1) The Department of Legal Affairs shall provide  
9 legal services to the board within the Department of Banking  
10 and Finance, but the primary responsibility of the Department  
11 of Legal Affairs shall be to represent the interests of the  
12 citizens of the state by vigorously counseling the board with  
13 respect to its obligations under the laws of the state.

14 Subject to the prior approval of the Attorney General, the  
15 board may retain independent legal counsel to provide legal  
16 advice to the board on a specific matter. Fees and costs of  
17 such counsel shall be paid from the Regulatory Trust Fund of  
18 the Department of Banking and Finance.

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

21           497.131 Disciplinary proceedings.--

22           (4) The determination as to whether probable cause  
23 exists shall be made by majority vote of the probable cause  
24 panel of the board. The board shall provide, by rule, that the  
25 determination of probable cause shall be made by a panel of  
26 its members or by the department. The board may provide, by  
27 rule, for multiple probable cause panels composed of at least  
28 two members. The board may provide, by rule, that one or more  
29 members of the panel or panels may be a former board member.  
30 The length of term or repetition of service of any such former  
31 board member on a probable cause panel may vary according to

1 the direction of the board when authorized by board rule. Any  
2 probable cause panel must include one of the board's former or  
3 present consumer members, if one is available, willing to  
4 serve, and is authorized to do so by the board chair. Any  
5 probable cause panel must include a present board member. Any  
6 probable cause panel must include a former or present  
7 professional board member. However, any former professional  
8 board member serving on the probable cause panel must hold an  
9 active valid license for that profession. All probable cause  
10 proceedings conducted pursuant to the provisions of this  
11 section are exempt from the provisions of s. 286.011 and s.  
12 24(b), Art. I of the State Constitution. The probable cause  
13 panel may make a reasonable request, and upon such request the  
14 department shall provide such additional investigative  
15 information as is necessary to the determination of probable  
16 cause. A request for additional investigative information  
17 shall be made within 15 days from the date of receipt by the  
18 probable cause panel of the investigative report of the  
19 department. The probable cause panel shall make its  
20 determination of probable cause within 30 days after receipt  
21 by it of the final investigative report of the department. The  
22 Comptroller may grant extensions of the 15-day and the 30-day  
23 time limits. If the probable cause panel does not find  
24 probable cause within the 30-day time limit, as may be  
25 extended, or if the probable cause panel finds no probable  
26 cause, the department may determine, within 10 days after the  
27 panel fails to determine probable cause or 10 days after the  
28 time limit has elapsed, that probable cause exists. If the  
29 probable cause panel finds that probable cause exists, it  
30 shall direct the department to file a formal complaint against  
31 the licensee. The department shall follow the directions of

1 the probable cause panel regarding the filing of a formal  
2 complaint. If directed to do so, the department shall file a  
3 formal complaint against the subject of the investigation and  
4 prosecute that complaint pursuant to the provisions of chapter  
5 120. However, the department may decide not to prosecute the  
6 complaint if it finds that probable cause had been  
7 improvidently found by the panel. In such cases, the  
8 department shall refer the matter to the board. The board may  
9 then file a formal complaint and prosecute the complaint  
10 pursuant to the provisions of chapter 120. The department  
11 shall also refer to the board any investigation or  
12 disciplinary proceeding not before the Division of  
13 Administrative Hearings pursuant to chapter 120 or otherwise  
14 completed by the department within 1 year after the filing of  
15 a complaint. A probable cause panel or the board may retain  
16 independent legal counsel, employ investigators, and continue  
17 the investigation as it deems necessary; all costs thereof  
18 shall be paid from the department's Regulatory Trust Fund. All  
19 proceedings of the probable cause panel shall be exempt from  
20 the provisions of s. 120.525.

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

23 497.213 Annual license fees.--

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

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

29 (b) For a cemetery with at least \$25,000 but less than  
30 \$100,000 annual gross sales.....\$350.

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- 1 (c) For a cemetery with annual gross sales of at least  
2 \$100,000 but less than \$250,000.....\$600.  
3 (d) For a cemetery with annual gross sales of at least  
4 \$250,000 but less than \$500,000.....\$900.  
5 (e) For a cemetery with annual gross sales of at least  
6 \$500,000 but less than \$750,000.....\$1,350.  
7 (f) For a cemetery with annual gross sales of at least  
8 \$750,000 but less than \$1,000,000.....\$2,250~~\$1,750~~.  
9 (g) For a cemetery with annual gross sales of at least  
10 \$1,000,000 but less than \$5,000,000 ~~or more~~.....\$3,250~~\$2,650~~.  
11 (h) For a cemetery with annual gross sales of  
12 \$5,000,000 or more.....\$4,900.

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

15 497.245 Care and maintenance trust fund, percentage of  
16 payments for burial rights to be deposited.--

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



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

3           497.341 Burial without regard to race or color.--

4           (1) No cemetery company or other legal entity  
5 conducting or maintaining any public or private cemetery may  
6 deny burial space to any person because of race or color. A  
7 cemetery company or other entity operating any cemetery may  
8 designate parts of cemeteries or burial grounds for the  
9 specific use of persons whose religious code requires  
10 isolation. Religious institution ~~Church~~ cemeteries may limit  
11 burials to ~~church~~ members of the religious institution and  
12 their families.

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

15           497.405 Certificate of authority required.--

16           (4) The provisions of this section do not apply to  
17 religious-institution-owned ~~church-owned~~ cemeteries exempt  
18 under s. 497.003(1)(d), in counties with a population of at  
19 least 960,000 persons on July 1, 1996, with respect to the  
20 sale to the religious institution's ~~church's~~ members and their  
21 families of interment rights, mausoleums, crypts, cremation  
22 niches, vaults, liners, urns, memorials, vases, foundations,  
23 memorial bases, floral arrangements, monuments, markers,  
24 engraving, and the opening and closing of interment rights,  
25 mausoleums, crypts and cremation niches, if such cemeteries  
26 have engaged in the sale of preneed contracts prior to October  
27 1, 1993, and maintain a positive net worth at the end of each  
28 fiscal year of the cemetery.

29           Section 10. Subsections (4), (9), and (12) of section  
30 497.407, Florida Statutes, are amended to read:

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1           497.407 Certificate of authority; annual statement;  
2 renewal; transfer.--  
3           (4)(a) An application to the board for an initial  
4 certificate of authority shall be accompanied by an  
5 application fee of \$500. Thereafter, each annual application  
6 for renewal of a certificate of authority shall be accompanied  
7 by the appropriate fee as follows:  
8           1. For a certificateholder with no preneed contract  
9 sales during the immediately preceding year.....\$300.  
10           2. For a certificateholder with at least 1 but fewer  
11 than 50 preneed contract sales during the immediately  
12 preceding year.....\$400.  
13           3. For a certificateholder with at least 50 but fewer  
14 than 250 preneed contract sales during the immediately  
15 preceding year.....\$500.  
16           4. For a certificateholder with at least 250 but fewer  
17 than 1,000 preneed contract sales during the immediately  
18 preceding year.....\$850.  
19           5. For a certificateholder with at least 1,000 but  
20 fewer than 2,500 preneed contract sales during the immediately  
21 preceding year.....\$1,500.  
22           6. For a certificateholder with at least 2,500 but  
23 fewer than 5,000 preneed contract sales during the immediately  
24 preceding year.....\$2,500.  
25           7. For a certificateholder with at least 5,000 but  
26 fewer than 15,000 preneed contract sales during the  
27 immediately preceding year.....\$6,000.  
28           8. For a certificateholder with at least 15,000 but  
29 fewer than 30,000 preneed contract sales during the  
30 immediately preceding year.....\$12,500.  
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1           9. For a certificateholder with 30,000 preneed  
2 contract sales or more during the immediately preceding year  
3 .....\$18,500.  
4           **(b)** ~~The fee payable to the department for issuance of~~  
5 ~~the original certificate of authority and each annual renewal~~  
6 ~~thereof shall be set by the board at an amount not to exceed~~  
7 ~~\$500 and shall accompany each application for an original~~  
8 ~~certificate and, thereafter, each annual statement.~~Any person  
9 or entity that is part of a common business enterprise that  
10 has a certificate of authority issued pursuant to this section  
11 and elects to operate under a name other than that of the  
12 common business enterprise shall submit an application on a  
13 form adopted by the board to become a branch registrant. Upon  
14 the approval of the board that such entity qualifies to sell  
15 preneed contracts under this chapter except for the  
16 requirements of subparagraph (2)(c)1. and if the  
17 certificateholder meets the requirements of such subparagraph,  
18 a branch registration shall be issued. Each branch registrant  
19 may operate under the certificate of authority of the common  
20 business enterprise upon the payment of a fee established by  
21 the board not to exceed\$150~~\$100~~ accompanying the application  
22 on April 1 annually. The fee shall be payable to the  
23 department's Regulatory Trust Fund ~~under the department.~~  
24           (9) In addition to any other penalty that may be  
25 provided for under this chapter, the board may levy a fine not  
26 to exceed \$50 a day for each day the certificateholder fails  
27 to file its annual statement, and the board may levy a fine  
28 not to exceed \$50 a day for each day the certificateholder  
29 fails to file the statement of activities of the trust. Upon  
30 notice to the certificateholder by the board that the  
31 certificateholder has failed to file the annual statement or

1 the statement of activities of the trust, the  
2 certificateholder's authority to sell preneed contracts shall  
3 cease while such default continues. The board shall deposit  
4 all sums collected under this section to the credit of the  
5 department's Regulatory Trust Fund ~~under the department~~.

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

13 Section 11. Section 497.431, Florida Statutes, is  
14 amended to read:

15 497.431 Examinations and investigations.--The  
16 department shall, as often as it may deem necessary but at  
17 least once every 3 years, examine the business of any person  
18 writing preneed contracts and any guaranteeing organization  
19 existing under this chapter to the extent applicable. The  
20 examination shall be ~~at the expense of the person or~~  
21 ~~organization examined as provided in this section and shall be~~  
22 made by ~~the~~ designated representatives or examiners  
23 ~~representative or examiner~~ of the department. The written  
24 report of each such examination, when completed, shall be  
25 filed in the office of the board and, when so filed, shall  
26 constitute a public record. Any such person or organization  
27 being examined shall produce, upon request, all records of the  
28 company or organization. The designated representative of the  
29 board may at any time examine the records and affairs of any  
30 such person or organization, whether in connection with a  
31 formal examination or not. The board may waive the examination

1 requirements of this section if the certificateholder or  
2 guaranteeing organization submits audited financial  
3 statements. ~~The department may charge an examination fee~~  
4 ~~prescribed by rule, but such fee may not exceed \$300 per~~  
5 ~~8-hour day for each examiner. Such examination fee shall be~~  
6 ~~calculated on an hourly basis and shall be rounded to the~~  
7 ~~nearest hour.~~The person or organization examined For  
8 ~~out-of-state travel, the licensee shall also pay the travel~~  
9 expense and per diem subsistence allowance provided for state  
10 employees under s. 112.061 for out-of-state travel incurred by  
11 department representatives or examiners in connection with an  
12 examination. The department shall be entitled to recover the  
13 reasonable and justifiable costs of investigation if the  
14 investigation results in judicial or administrative  
15 disciplinary action.

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

18 497.435 Administrative fine in lieu of revocation or  
19 suspension of certificate of authority.--

20 (3) The fine shall be deposited into the department's  
21 Regulatory Trust Fund ~~under the department.~~

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

24 497.439 Preneed sales agents.--

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

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

4           (b) The name, address, and license number of the  
5 sponsoring certificateholder.

6           (c) A representation, signed by the applicant, that  
7 the applicant meets the requirements set forth in subsection  
8 (6).

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

18           (e) A statement indicating whether the applicant has  
19 any type of working relationship with any other  
20 certificateholder or insurance company.

21           Section 14. This act shall take effect July 1, 2000.

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LEGISLATIVE SUMMARY

Revises various provisions of ch. 497, F.S., the Florida Funeral and Cemetery Services Act. Defines the term "religious institution" and revises terminology relating to cemeteries owned by such institutions, to conform. Revises other terminology designating a trust fund.

Authorizes the Board of Funeral and Cemetery Services or the Department of Banking and Finance to adopt rules to allow for electronic submission of any applications, documents, or fees and to authorize the board or department to accept a certification of compliance in lieu of requiring the actual documents.

Increases annual license fees for cemeteries with annual gross sales above a certain amount. Provides initial application and renewal fees for a certificate of authority to sell a preneed contract. Deletes the requirement that preneed sales agents submit their application and fee for registration via certified mail, and provides for such submission to be as provided by department rule and approved by the board. Eliminates the fee charged to examine the business of any person writing preneed contracts and any guaranteeing organization, and revises the expenses that the person or organization being examined is responsible for paying in connection with an examination. Eliminates references to annual and other examination fees, to conform. (See bill for details.)