

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2238

SPONSOR: Regulated Industries Committee, Senators Pruitt, Klein, and others

SUBJECT: Funeral & Cemetery Services

DATE: February 26, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vaccaro	Caldwell	RI	Favorable/CS
2.	_____	_____	AGG	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Committee Substitute to Senate Bill 2238 does the following:

- Transfers regulatory authority over ch. 497, F.S., and related funds from the Department of Banking and Finance to the Department of Business and Professional Regulation;
- Provides for expiration of terms for the members of the Board of Funeral Directors and Embalmers and the Board of Funeral and Cemetery Services;
- Creates the new Board of Funeral Directors and Cemeteries and provides for membership;
- Makes conforming changes to s. 20.165, F.S., ch. 470, F.S., and ch. 497, F.S., to reference the Board of Funeral Directors and Cemeteries and the Department of Business and Professional Regulation;
- Provides that headquarters for the Board of Funeral Directors and Cemeteries will be located in the City of Tallahassee;
- Requires additional education for application and renewal of direct disposer registration;
- Provides additional requirements for disinterment and reinterment of human remains and provides for related criminal penalties;
- Requires the Department of Business and Professional Regulation, in consultation with the Department of Health, to adopt rules regarding issuance of disinterment permits;
- Provides additional requirements for identification of human remains and provides for related civil and criminal penalties;
- Requires the Board of Funeral Directors and Cemeteries to adopt rules regarding identification of human remains, and access to cemeteries;
- Provides that funds for legal fees and costs of the Board of Funeral Directors and Cemeteries to retain independent counsel will be paid from the Professional Regulation Trust Fund;

- Reduces the minimum acreage requirement for cemetery sites from 30 to 15 acres;
- Prohibits cemetery companies from restricting access to the cemetery by persons installing monuments or markers on behalf of registered monument establishments;
- Clarifies application of certain illegal tying arrangements to all entities owning and operating a cemetery;
- Requires that written contracts regarding burial contain a complete description of any grave space to be used for interment of human remains;
- Provides that the failure to install a monument within a specified term constitutes breach of contract unless the certificateholder has a written agreement for an extension of time;
- Prohibits the preneed sale of undeveloped cemetery property prior to the filing of a site plan for board approval; and
- Requires that funeral directors who handle interments must file a supplement to the death certificate providing information regarding the location of the cemetery and the specific location where the body is buried.

This committee substitute substantially amends the following sections of the Florida Statutes: 20.165, 215.321, 455.2226, 470.002, 470.003, 470.017, 470.018, 470.0295, 470.0355, 497.005, 497.103, 497.105, 497.117, 497.201, 497.233, 497.253, 497.305, 497.325, 497.333, 497.361, 497.419, and 497.429.

This committee substitute creates several unnumbered sections and section 497.442 of the Florida Statutes.

This committee substitute repeals the following sections of the Florida Statutes: 497.101, 497.107, and 497.109.

II. Present Situation:

The regulation of funeral directing, embalming, and direct disposition of human remains is governed by ch. 470, F.S. Regulation is administered by the Board of Funeral Directors and Embalmers within the Department of Business and Professional Regulation (DBPR). DBPR is established pursuant to s. 20.165, F.S.

Pursuant to s. 470.0087, F.S., a funeral director performs the following functions:

- Selling or offering to sell funeral services on an at-need basis;
- Planning or arranging, on an at-need basis, the details of a funeral service;
- Making, negotiating, or completing the arrangements of a funeral service on an at-need basis;
- Directing funeral services within 72 hours of a burial or cremation; and
- Managing or supervising the operation of a funeral establishment.

The term “embalming” is defined as the practice of disinfecting or preserving or attempting to disinfect and preserve dead human bodies by replacing certain body fluids with preserving and disinfecting chemicals. The term “direct disposal” is defined as the cremation of human remains without preparation of the human remains by embalming and without any attendant services or

rites such as funeral or graveside services. *See* s. 470.001, F.S. Licensure of funeral directors and embalmers, and registration of direct disposers, is required under ch. 470, F.S.

The regulation of cemeteries, and the sale of preneed burial rights, preneed funeral or burial merchandise, and preneed funeral or burial services, is governed by ch. 497, F.S. Regulations is administered by the Board of Funeral and Cemetery Services within the Department of Banking and Finance. Licensure of cemeteries and registration of monument establishments and burial rights brokers is required under ch. 497, F.S. A certificate of authority is required for the sale of preneed contracts.

III. Effect of Proposed Changes:

Section 1 creates an unnumbered section, which provides that the act may be cited as the “Funeral and Cemetery Services Industry Regulatory Unification Act.”

Section 2 creates an unnumbered section, which transfers all records, personnel, property, and unexpended balances of appropriations, allocations, or other funds for the administration of ch. 497, F.S., from the Department of Banking and Finance to DBPR.

Section 3 creates an unnumbered section, which provides that the transfer of authority over ch. 497, F.S., from the Department of Banking and Finance to DBPR does not affect the validity of any judicial or administrative proceeding pending as of September 30, 2002. The committee substitute provides that DBPR will be substituted for the Department of Banking and Finance as a party in interest.

Section 4 creates an unnumbered section, which provides that all licenses and registrations issued under ch. 497, F.S., which are valid on September 30, 2002, shall remain valid.

Section 5 creates an unnumbered section, which provides that the terms of the current members of the Board of Funeral Directors and Embalmers and the Board of Funeral and Cemetery Services expires on October 1, 2002. The committee substitute provides for appointment of membership to the new Board of Funeral and Cemetery Services in staggered terms beginning October 1, 2002, as follows:

- Three members appointed for terms of two years each, consisting of one funeral director, one cemetery owner or operator, and one consumer.
- Three members appointed for terms of three years each, consisting of one funeral director, one cemetery owner or operator, and one consumer.
- Three members appointed for terms of four years each, consisting of one funeral director, one cemetery owner or operator, and one monument dealer.

As the foregoing terms expire, the Governor will appoint successors for terms of four years each, in accordance with s. 470.003(3), F.S. The section takes effect upon the act becoming a law.

Section 6 makes a conforming amendment to s. 20.165, F.S., to reference the Board of Funeral Directors and Cemeteries.

Section 7 amends s. 215.321, F.S., to remove the deposit of funds received pursuant to ch. 497, F.S., from the Regulatory Trust Fund.

Section 8 makes a conforming amendment to s. 455.2226, F.S., to reference the Board of Funeral Directors and Cemeteries.

Section 9 makes a conforming amendment to s. 470.002, F.S., to redefine the term “board” to mean the Board of Funeral Directors and Cemeteries.

Section 10 amends s. 470.003, F.S., to provide for the membership of the new Board of Funeral Directors and Cemeteries (board). The committee substitute requires that: three members be funeral directors licensed under ch. 470, F.S.; three members be owners or operators of a cemetery licensed under ch. 497, F.S.; two members be lay persons; and one member be a monument dealer registered under ch. 497, F.S. The committee substitute also provides that the new board headquarters will be located in the City of Tallahassee.

Section 11 amends s. 470.017, F.S., to require that, in addition to Florida mortuary law, applicants for registration as a direct disposer receive a passing grade in college credit courses that include: ethics, microbiology-infectious diseases, thanatology, and accounting.

Section 12 amends s. 470.018, F.S., to increase the education renewal requirement for registered direct disposers from three to six classroom hours.

Section 13 amends subsection (1) of s. 470.0295, F.S., to require the physical presence of a licensed funeral director during the disinterment and reinterment of human remains, regardless of whether reinterment is to be made in the same cemetery. The committee substitute amends subsection (3) to require that the funeral director obtain a disinterment permit from the local registrar of vital statistics prior to disinterment and reinterment, in addition to an existing requirement for authorization from a legally authorized person or court of competent jurisdiction. The committee substitute requires DBPR to establish rules in consultation with the Department of Health governing issuance of disinterment permits. The committee substitute also provides that any person who violates subsection (3) is guilty of a first-degree misdemeanor.

Section 14 amends subsection (1) of s. 470.0355, F.S., to require that a licensee or registrant in charge of final disposition of human remains affix identification to the casket or burial container, in addition to the ankle or wrist of the deceased. The committee substitute deletes a requirement that the identification include the social security number of the deceased. The committee substitute also amends subsection (2) to require that the identification remain with the human remains until final disposition. Identification may only be removed for relocation from the ankle to wrist or from the wrist to ankle. If the deceased is to be cremated, the identification may be removed just prior to cremation but, in that case, must be maintained within the permanent file.

The committee substitute creates subsection (4), which requires that the board adopt rules necessary to implement the requirements and operating procedures for identification of human remains. The committee substitute creates subsection (5), which authorizes DBPR to file an action for civil penalties of \$10,000 against any person who violates this section or any rule adopted hereunder, and provides that a licensee is entitled to a ch. 120, F.S., hearing to contest the penalty. Subsection (6) is created, which authorizes parties who are injured by a violation of this part to file a civil action for recovery of actual and punitive damages, and costs and fees, in

addition to other remedies under law. Finally, subsection (7) is created, which provides that a person who violates this section is guilty of a third-degree felony.

Section 15 makes conforming amendments to s. 497.005, F.S., to redefine the terms “board” and “department” to mean the new board and DBPR.

Section 16 amends s. 497.103, F.S., regarding board rules governing the operation of cemeteries. The committee substitute requires the rules to include establishment of reasonable times for access to all cemeteries, including the time of day and days of the week for access to install monuments and markers.

Section 17 makes conforming amendments to s. 497.105, F.S., to reference DBPR and the new board regarding powers of the “department” under ch. 497, F.S.

Section 18 makes a conforming amendment to s. 497.117, F.S., to make reference to the new board and DBPR, regarding provision of legal service by the Department of Legal Affairs. The committee substitute also provides that if the board retains independent legal counsel to advise the board on specific matters, fees and costs for counsel will be paid from DBPR’s Professional Regulation Trust Fund.

Section 19 makes a conforming amendment to s. 497.201, F.S., to reference DBPR. The committee substitute also reduces the minimum acreage requirement for cemetery sites from 30 to 15 acres

Section 20 makes a conforming amendment to s. 497.233, F.S., to renumber a subsequent section of ch. 497, F.S.

Section 21 makes technical amendments to s. 497.253, F.S., and makes a conforming amendment to reference DBPR. The committee substitute also makes a conforming amendment to reference the 15-acre minimum provided for in section 19. The committee substitute also provides that provisions regarding the 15-acre minimum do not apply to a cemetery company licensed prior to July 1, 2002, which owns less than 30 acres of land.

Section 22 amends s. 497.305, F.S., to prohibit a cemetery company from restricting access to a cemetery by any person needing access to install a monument or marker on behalf of a registered monument establishment, provided such access is within reasonable times for access.

Section 23 amends s. 497.325, F.S., regarding illegal arrangements that tie the purchase of burial space to the purchase of a monument. The committee substitute makes provisions regarding cemetery companies applicable to any entity that owns or operates a cemetery.

Section 24 amends s. 497.333, F.S., to require that a written contract for the purchase of any burial right, merchandise, or service include a complete description of any grave space to be used for the interment of human remains.

Section 25 repeals subsection (5) of s. 497.361, F.S., which requires that monuments be delivered and installed no later than 120 days after the date of sale.

Section 26 creates a new subsection (6) of s. 497.419, F.S., and renumbers current subsections (6) through (10) as subsections (7) through (11). The committee substitute provides that the failure to install a monument within 180 days after interment shall be considered a breach of contract, unless the certificateholder has a written agreement to extend the installation date. After a breach of contract, a purchaser shall be entitled to a refund within 30 days of such request. Nothing in the subsection is meant to preclude the purchase and installation of a new monument from any other registered monument dealer.

Section 27 makes a conforming amendment to s. 497.429, F.S., to make reference to s. 497.419(7), F.S., as amended.

Section 28 creates s. 497.442, F.S., which prohibits the preneed sale of undeveloped cemetery property prior to the filing of a site plan for board approval. The committee substitute also requires that each site plan be completed by a professional surveyor and mapper licensed under ch. 472, F.S.

Section 29 repeals ss. 497.101, 497.107, and 497.109, F.S., which address membership of the Board of Funeral and Cemetery Services and its headquarters.

Section 30 creates an unnumbered section, which requires that within 10 days after interment, the funeral director handling the interment must file with the local registrar an addendum to the death certificate, which provides the address of the cemetery and the specific location within the cemetery where the body is buried.

Section 31 provides that the act takes effect October 1, 2002.

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:

DBPR estimates that the requirement that the preparation of a cemetery site plan by a professional surveyor and mapper will cost \$15,000 per acre (1200 spaces per acre). DBPR estimates that the cost for identification to outer burial containers at \$.05 per burial will cost \$6,000.

C. Government Sector Impact:

The committee substitute transfers authority of ch. 497, F.S., from the Department of Banking and Finance to DBPR. It is unknown at this time whether there will be a fiscal impact on DBPR. DBPR reports that it is awaiting information from the Department of Banking and Finance.

VI. Technical Deficiencies:

The committee substitute provides that DBPR may file a civil action for a violation of s. 470.0355, F.S. The committee substitute provides, however, that a licensee is entitled to a ch. 120, F.S., hearing to contest such penalty. A hearing pursuant to ch. 120, F.S., is an administrative proceeding and, as such, would not be the proper forum for challenging a civil action.

The committee substitute also provides under newly created subsection (6) of s. 470.0355, F.S., that a person injured by “this part” may file a civil action. It appears the appropriate reference should be to the subsection itself.

The committee substitute reduces the minimum cemetery acreage requirement to 15 acres. However, at s. 497.201(3)(c), F.S., the committee substitute still refers to 30 acres.

VII. Related Issues:

None.

VIII. Amendments:

None.